

2 days leading up to Christmas and other holidays, and within the last 2 days before inventory.” (Emphasis added.)

As described in further detail below, OURWalmart’s Concerted Activity Notice did not appear in a vacuum. It reflects a repeated, express, and unapologetic plan to use hit-and-run strikes to call media attention to the UFCW’s overarching raise-the-bar messaging while attempting to harass Walmart into workplace concessions. [See, e.g., <http://www.thenation.com/blog/171435/biggest-strike-against-biggest-employer-walmart-workers-make-history-again#axzz2Y2JltgwQ>] (“‘There’s going to be more days that we’re going to strike,’ [OURWalmart spokesperson] (b) (6), (b) (7)(C) said last night, ‘and it’s not going to stop. I’m not going to stop until they respect us and give us what we want.’ That’s in line with what the UFCW’s (b) (6), (b) (7)(C) promised earlier this month: ‘This is a new permanent reality for Walmart.... Two thousand and twelve is the beginning of the season where retail workers are going to start to stand up.’ As (b) (6), (b) (7)(C) marched towards the Hanover Walmart this morning, former SEIU (b) (6), (b) (7)(C) credited the campaign with showing that workers, through strategic use of strikes, ‘can engage in actions that both make them feel powerful and that impact the company, and they don’t need to just spend their life waiting for some [National Labor Relations Board] process to demonstrate they want a union.’”) (emphasis added).

The UFCW proudly captures its IWS-orchestrated demonstrations on video. Walmart attaches a sampling of those IWS-focused demonstration videos, all admittedly orchestrated by the UFCW (cited above and below), labeled by IWS/demonstration location and date. [Tab 8.] Those videos demonstrate unequivocally, objectively, and beyond question that the UFCW plans and conducts IWS demonstrations to affirmatively disrupt Walmart’s sales operations on its selling floor.

4. In Early-October 2012, Walmart Associates Began Short Hit-And-Run Work Stoppages As Part Of The UFCW’s Coordinated Plan.

In October 2012, the UFCW began promoting what it called a “National Day of Action.” [Tab 13.] The UFCW called for associates to walk off the job for a short period to participate in UFCW-choreographed demonstrations at various locations around the country. [Id.] (b) (6), (b) (7)(C) testified that the UFCW orchestrated the October 2012 “Day of Action” events. [Tab 2.]

Associates who participated in the UFCW’s campaign events provided their store managers with identical UFCW-supplied letters identifying themselves as OURWalmart members and stating that they would not work their shift on that day as part of a UFCW-coordinated work stoppage. [See October letters at Tab 9.] The letters provided no specific store-related reason for the work stoppage, but instead stated generally and globally:

We, the Walmart Associates whose signatures appear below, are not working today to protest Walmart’s attempts to silence Associates who have spoken out against things like Walmart’s low take home pay, unpredictable work schedules, unaffordable health benefits and Walmart’s retaliation against those Associates who

have spoken out. These Associates are members of OURWalmart and they will not be silenced. It is illegal for Walmart to attempt to silence and retaliate against them and unfair labor practices have been filed with the National Labor Relations Board in protest. [Id.]

For example, on October 4, 2012, Associates at Walmart Stores 1805, 2110, 2401, 2568, 2842, 2886, 2960, 3522, 5154 in Southern California participated in the UFCW-orchestrated work stoppage campaign. [See October UFCW strike letters at Tab 9.] On October 9, 2012, the UFCW's website noted that associates at stores in Dallas as well as "Miami, the DC area, Sacramento, Southern California and the Bay area are also walking off the job." [Tab 14.] As reported by *Salon*, associates walked off the job for "the *second time in five days*" which was "spearheaded by OURWalmart, a year-old organization of Walmart workers backed by the UFCW." [Tab 15 (emphasis added).]

When returning to work after their brief work stoppages, associates at the various stores provided their managers with identical "return to work" campaign letters that explained the common, generic purpose of their prior work stoppage. [See October return-to-work letters at Tab 10.] In part, the form letters state:

If you fail to allow any of us to return to work for our next scheduled shifts, we will immediately file unfair labor practice charges with the National Labor Relations Board (NLRB). . . . [W]e did not work to protest Walmart in response to the retaliatory unfair labor practices that Walmart committed against its Associates in violation of the National Labor Relations Act ("NLRA"). . . . These unfair labor practices include Walmart's attempts to silence Associates who spoke out for better wages, hours, and other working conditions, and its retaliation against those who did speak out. [Id.]

Of the identified JWO Associates, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) provided the same generic "strike" and/or "return to work" letters in preparation for participating in the UFCW's planned National Day of Action on (b) (6), (b) (7)(C), 2012. [Tab 11.] (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) actually failed to work their scheduled shifts to participate in the UFCW-orchestrated National Day of Action IWS. [See JWO Associate Time Archive Reports and Schedules (indexed alphabetically) at Tab 16.]

- a. (b) (6), (b) (7)(C) Participated In A UFCW-Orchestrated IWS On (b) (6), (b) (7)(C) 2012.

Like the associates discussed above, on (b) (6), (b) (7)(C) engaged in a work stoppage and participated in the UFCW's mass demonstration in front of Store 471 in Lancaster, Texas. Like the associates discussed above, (b) (6), (b) (7)(C) also provided management the same generic UFCW "I'm going out on strike" letter. [Tab 11.] (b) (6), (b) (7)(C) and the other approximately 20 picketers stood together near the front of the store and held signs with the same generic "We

Want Respect” and “We Want Better Hours” messages used in all the other work stoppages. [Tab 17.] A demonstrator with a bull horn shouted repeatedly, “Stand up! Live better!” and the other demonstrators loudly joined [REDACTED] chant. [REDACTED] entered the store and tried to recruit other associates working at the time to join the work stoppage and demonstration. [REDACTED] failed to work [REDACTED] scheduled shifts on [REDACTED] and [REDACTED] [Tab 16.]

b. (b) (6), (b) (7)(C) Participated In A UFCW-Orchestrated IWS On (b) (6), (b) (7)(C) 2012.

On (b) (6), (b) (7)(C) 2012, after the overnight shift’s first break ended at approximately 12:15 [REDACTED] at Store 3455 in Richmond, California, a temporary associate read the same generic “strike” letter to the assistant manager on duty as other associates at other stores had read before engaging in the UFCW-orchestrated IWS as part of other National Day of Action events. [Tabs 9, 11.] Along with several other associates, (b) (6), (b) (7)(C) also signed the “strike” letter. [Id.] The (b) (6), (b) (7)(C) associate said that “The union is flying some associates to the Home Office in Bentonville to attend a meeting tomorrow.” The (b) (6), (b) (7)(C) associate and several other associates who had signed the letter immediately walked out of the store and failed to complete their shifts. [REDACTED] did not work that day, but failed to work [REDACTED] scheduled shift later that evening on (b) (6), (b) (7)(C) 2012. [Tab 16.] On (b) (6), (b) (7)(C) 2012, [REDACTED] along with the other associates who had also failed to work their scheduled shifts, provided management with the same generic UFCW-supplied “return to work” letters that other associates who engaged in the UFCW’s National Day of Action also provide their management. [Tabs 10, 11.]

5. On (b) (6), (b) (7)(C), 2012, The UFCW Held A Mass Demonstration At Walmart’s Home Office As Part Of Its Hit-And-Run IWS Campaign.

On (b) (6), (b) (7)(C) 2012, the UFCW held a mass demonstration at Walmart’s Home Office led by UFCW organizers. About 150 demonstrators, marched to and congregated directly in front of the main entrance where they carried large banners and signs and chanted, in a call-and-response fashion, a list of the same generic demands they made and continue to make in the UFCW-drafted “I’m going out on strike” and “now I’m coming back to work” letters. After voicing their generic demands for respect and better pay, benefits, and hours, the group asked the Walmart managers who came out to meet them, “What’s your answer?” [See www.youtube.com/watch?v=Tp3DNmag1r8.] Numerous associates failed to report to scheduled shifts to participate in the demonstration and produced the UFCW’s generic strike and return-to-work letters [See (b) (6), (b) (7)(C) time-frame letters at Tabs 9, 10, 11.]

6. The UFCW Threatened More Work Stoppages On Black Friday.

On October 10, 2012, the UFCW posted a story titled *Walmart Workers Plan Black Friday Protest* on the Corporate Action Network (used by (b) (6), (b) (7)(C) to post UFCW-demonstration directions [Tab 2]). It read:

Workers at several Walmart stores are...announcing their intention to *go out on strike* on Black Friday *if their demands are not met*. . . (b) (6), (b) (7)(C) a leader of the United Food and Commercial Workers Union and the (b) (6), (b) (7)(C) . . .

said the list of demands against Walmart include putting these fired workers back on their jobs, restoring hours of others and respecting people's right to speak out about conditions on the job. [Tab 18.]

BizTimesMedia reported on October 11, 2012, that: "One day after Walmart employees in 12 states launched a labor strike, workers today issued an ultimatum to the retail giant: Stop retaliating against workers trying to organize, or the year's most important shopping day, the Friday after Thanksgiving, *will see the biggest disruptions yet.*" [Tab 19 (emphasis added).] On its Walmart Watch website, the UFCW added "Walmart workers say that if Walmart doesn't end its attempts to silence workers, they will make Black Friday a very memorable day for the company – complete with actions inside and outside of the stores and *a possible nationwide strike.*" [Tab 20 (emphasis added).] OURWalmart expressly solicited Walmart associates to refuse to work on Black Friday in support of the UFCW's generic messaging campaign. [Id.]

7. The UFCW Orchestrated Additional Pre-Black Friday IWS.

a. The UFCW Orchestrated IWS On November 2, 2012; (b) (6), (b) (7)(C) Participated Again.

Walmart planned and advertised Richmond, California Store 3455's Grand Re-Opening for Friday, November 2, 2012. During the overnight shift before the grand opening, an associate advised management that at 5:00 a.m., OURWalmart media and non-associate OURWalmart demonstrators from Sacramento would arrive to protest the grand opening. (b) (6), (b) (7)(C) added that several associates who engaged in prior IWS would again stop working. As predicted, the media arrived with non-associate OURWalmart demonstrators and gathered at the front of the store.

Shortly before 6:00 a.m., a group of associates, including (b) (6), (b) (7)(C), stopped working before their shift ended, did not clock out, and began to congregate in the customer service sales area directly in front of the store's main entrance while holding signs and taking photographs of themselves. Shortly after the store opened at 6:00 a.m., the larger group of non-associate demonstrators from outside burst into the store and joined the IWS associates in the customer service area and conducted an in-store "flash mob." The 20-plus demonstrators held OURWalmart banners that generically stated "Stand Up Live Better" and "On Strike Walmart End Retaliation." [Tab 21.] A few days later, the associates who engaged in the work stoppage, including Bravo, provided management the identical "return to work" letter that associates across the country provided management after the October work stoppages. [Tabs 10, 11.]

b. The UFCW Orchestrated Another IWS On November 14, 2012; (b) (6), (b) (7)(C) Delivered A UFCW Strike Letter.

On November 14, 2012, several associates at Store 5434 in San Leandro, California participated in a UFCW-orchestrated demonstration at the store. Several associates, including (b) (6), (b) (7)(C) provided store management the same work stoppage letter provided to other stores in October (although (b) (6), (b) (7)(C) actually worked (b) (6), (b) (7)(C) scheduled shift that day). [Tabs 9, 11.] As the demonstrators left the store, some said, "See you on Thanksgiving" and "See you on Black Friday." Fliers found in the store and parking lot stated "Stay tuned for Wal-Mart Movie Night – a series of films on successful strikes! More Info on Black Friday!" [Tab 22.]

c. The UFCW Orchestrated Another IWS on November 15, 2012;
(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Participated.

On November 15, 2012, numerous OURWalmart demonstrators, including (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) participated in a UFCW-orchestrated demonstration in the Federal Way, Washington area. As with the previous IWS demonstrations, many of the demonstrators wore green OURWalmart t-shirts and held OURWalmart signs that contained the same generic slogans they displayed and chanted at prior IWS demonstrations. For example, the generic signs stated "We Want To Work Full Time," "Respect Us As Associates," "Change Walmart Rebuild America," "Honor Our Freedom To Speak Out," and "Pay Us Enough To Raise A Family."

[See http://www.youtube.com/watch?v=S1_zvGNWv4E.] The same day, after finishing their demonstrations, several associates who engaged in the work stoppage, including (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) provided management the identical UFCW "return to work" letter that associates across the country provided management after previous UFCW-orchestrated work stoppages. [Tabs 10, 11.] (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) failed to work their scheduled shifts on November 15, 2012. [Tab 16.]

d. The UFCW Orchestrated Another IWS On November 16, 2012;
(b) (6), (b) (7)(C) Participated Again.

On November 16, 2012, several associates at Store 471, including (b) (6), (b) (7)(C) walked off the job to participate in another hit-and-run strike to participate in a mass demonstration at the store (JWO Associate (b) (6), (b) (7)(C) signed the generic letter and participated in the demonstration, but was not scheduled to work). UFCW-employee (b) (6), (b) (7)(C) led a group of approximately 35 UFCW demonstrators toward the front of the store where they began to picket directly in front of the store's entrance. [Tabs 17, 23.] The demonstrators wore OURWalmart shirts and generically chanted "We Shall Overcome" and "This Little Light of Mine" and carried signs saying, "Workers for Respect." [Id.] As before, the associates, including (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) gave management the same generic "I'm going out on strike" and "now I'm coming back to work" letters that contained the same boilerplate, UFCW-campaign messaging as the associates used in the previous intermittent work stoppages. [Tabs 9, 10, 11.]

e. The UFCW Orchestrated Another IWS On November 20, 2012;
(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Participated.

On November 20, 2012, the UFCW orchestrated another IWS at Store 2886 in Pico Rivera, California. Several associates, including JWO Associates (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) participated in the demonstration which involved over 40 demonstrators wearing OURWalmart shirts. They held up generic OURWalmart signs with slogans such as "Stand up! Live better!" and "On Strike for the Freedom to Speak Out," and chanted the same generic slogans about "scheduling, wages, benefits, and respect in the workplace." [Tab 24.] The (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) quoted (b) (6), (b) (7)(C) saying: "Today is a one-day strike and some of us are going to strike on Friday." [Id.] Several associates, including (b) (6), (b) (7)(C) provided management with the same generic "I'm going out on strike" letter as provided at previous UFCW-orchestrated

IWS. [Tabs 9, 11.] (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (along with numerous other associates) provided management with the same "return-to-work" letters as provided at previous IWS. [4, 5.] (b) (6), (b) (7)(C) did not work (b) (6), (b) (7)(C) scheduled shift to participate in the IWS (although (b) (6), (b) (7)(C) did work (b) (6), (b) (7)(C) shift before participating). [Tab 16.]

8. The UFCW-Orchestrated Numerous IWS Demonstrations On November 22 and 23, 2012 During Black Friday.

(b) (6), (b) (7)(C) testified that the UFCW planned, coordinated, conducted, and participated in a "National Day of Action" centered around Walmart's Black Friday shopping events. [Tab 2 (76:10-77:8).] During Walmart's Black Friday events on November 22 and 23, 2012, the UFCW orchestrated additional hit-and-run intermittent work stoppages at approximately 42 stores across the country, and associates provided the same generic, UFCW-drafted "we're not working" and "now we're working" letters when they decided they wanted to return to work. [Tabs 9, 10, 11, 25.] Of the JWO Associates, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) provided management the same generic "strike" letters. [Tab 11.] (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) read management the generic "strike" letters before walking off the job. (b) (6), (b) (7)(C) told management that (b) (6), (b) (7)(C) was "calling out" to support a UFP (sic) and (b) (6), (b) (7)(C) similarly told (b) (6), (b) (7)(C) manager that (b) (6), (b) (7)(C) was not working (b) (6), (b) (7)(C) shift to "support the Black Friday protest ULP." (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) called Walmart's automated interactive voice response system ("IVR") to report that they would not work their scheduled shifts (they gave no reason and did not speak with management). [Tab 26.] (b) (6), (b) (7)(C) did not report (b) (6), (b) (7)(C) decision to engage in an IWS demonstration and not work (b) (6), (b) (7)(C) scheduled shift; (b) (6), (b) (7)(C) was a no-call/no-show.

Those JWO Associates, along with many community activists, participated in UFCW-orchestrated demonstrations at their stores and other stores designed to disrupt Walmart's ability to serve its customers during the busiest shopping time of the year. Many wore the same green OURWalmart shirts, carried the same generic raise-the-bar signs, and chanted the same generic slogans as done at the previous IWS demonstrations discussed above. [See e.g., www.youtube.com/watch?v=FVjR09OkfT4; www.youtube.com/watch?v=wtcTUxN5ruw.] For example, during a demonstration at a Walmart in Chicago on Black Friday, (b) (6), (b) (7)(C) stated: "I'm standing up for all Walmart workers around the country so Walmart will give us a living wage and so Walmart will stop retaliating against us when we speak up. I want them to understand we just want to be able to pay our bills from one paycheck to the next and for them to respect us." [Tab 27.] The Twin Cities Daily Planet reported that Ahles stated "'OURWalmart's the organization united for respect at Walmart.' . . . 'It consists of former and current associates at Walmart. We're trying to reason with Walmart that we need better wage, better hours, benefits, that some of the company policies need change.'" [Tab 28.]

After the Black Friday IWS, JWO Associates (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) provided management with the same generic, UFCW-supplied "return-to-work" letters as previously provided. [Tab 11.] The following JWO Associates failed to work their scheduled shifts during the Black Friday events to participate in

the UFCW-orchestrated IWS: (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) [Tab 16].

The UFCW threatened intermittent work stoppages as “the new normal.” [Tab 29.]

9. The UFCW Agreed To A 60-Day National Moratorium On Labor Activity To Settle Walmart’s 8(b)(7)(C) Charge.

Shortly before Thanksgiving 2012, Walmart filed a 8(b)(7)(C) charge (26-CP-093377) against the UFCW for its ongoing recognitional picketing campaign. After its pre-planned Black Friday IWS demonstrations, the UFCW stopped announcing IWS activity. On January 29, 2013, the UFCW agreed to cease all demonstrations of all types – including IWS demonstrations – at Walmart stores for 60 days to settle the Charge. [Tab 30.] On April 10, 2013, the Board acknowledged that the UFCW completed the terms of its settlement. *See* Advice Memorandum, Case 26-CP-093377 (Kearney, April 10, 2013).

10. In February 2013, Walmart Told Prior IWS Strikers The Company’s Position On IWS And Reiterated The Attendance Policy.

a. Walmart Uses A No-Fault Attendance Policy.

Walmart uses a “no fault” Attendance/Punctuality Policy. [Tab 31.] In that Policy, Walmart tells associates that “to provide extraordinary customer service, we must have appropriate staffing in all areas at all times.” [*Id.*] Consequently, “regular and punctual attendance is a required and essential function of each associate’s job, [and attendance violations] will be subject to disciplinary action, up to and including termination.” [*Id.*]

Under the Policy, Walmart may begin disciplining an associate on the fourth unexcused absence (or “occurrence”) in a six-month rolling period. [*Id.*] Walmart will normally start the disciplinary process with a First Written Coaching unless management previously disciplined the associate for something else, in which case management will generally impose the next higher level of discipline. [*Id.*; *see also* Coaching for Improvement Policy at Tab 32.] Thereafter, Walmart may impose subsequent levels of discipline for additional unexcused absences in the same rolling six-month period; *i.e.*, Second Written Coaching (five occurrences), Third Written Coaching (six occurrences), and then discharge (seven or more occurrences). [Tab 31.]

Walmart requires associates to call its “Interactive Voice Response” or “IVR” system if they are not going to report for a scheduled shift and have not otherwise notified management that they will miss the shift. [*Id.*] The IVR system eliminates the “No one would answer the phone” or “I left a message with a co-worker” confusion with attendance tracking procedures. Indeed, when an associate calls the IVR line to report an absence, the IVR system gives the associate a tracking number to prove he or she called in. [*Id.*] Reporting an absence through the IVR system is significant because Walmart classifies a failure to report an absence as a no-call/no-show as opposed to simply an unexcused absence under the no-fault attendance rules. [*Id.*] Indeed, if an associate fails to report an absence (unless otherwise excused by law; *i.e.*, a medical emergency), the associate “will be subject to disciplinary action [for the no-call/no-show] beginning at the ‘Second’ Written coaching level if you have no other active coachings, or at the next available coaching level if you have an active coaching.” [*Id.*] Walmart then gives

the next level of discipline for each additional “no call/no show.” [*Id.*] If an employee misses three consecutive days without calling in (with no prior discipline), Walmart discharges the employee as a voluntary quit. [*Id.*]

In addition, the Policy allows for a non-disciplinary “reminder” before Walmart imposes attendance-related discipline. Under the Policy, if management sees that an associate has three unexcused absences in a rolling six-month period, store management can meet with the associate to conduct a “personal discussion” regarding those absences. [*Id.*] The personal discussion serves as a courtesy reminder to associates who may not remember the details of the attendance policy or understand its effect on their job status. The reminder is a practical tool to help inexperienced associates focus on their attendance issues and avoid attendance-related discipline. [*Id.*] It does not constitute a form of discipline, and it does not set the stage for further discipline (the underlying attendance record establishes whether subsequent discipline occurs). Under the “no fault” Policy, the reminder does not adversely impact the employment in any way.²

Notably, store managers deal with hundreds of associates and – unfortunately – many of those associates show up late, leave early, or do not show up to work at all on a semi-regular basis. Consequently, managers face an often-Herculean task of trying to do their jobs while at the same time managing literally thousands of moving “time and attendance” parts. To accomplish both objectives, many managers devote a block of time on a periodic basis to attendance-tracking review (*e.g.*, twice a month on a Friday morning). As a result, managers often find when they review attendance tracking data that an associate has already exceeded the three-occurrence threshold since the last manager review (*e.g.*, an associate with two occurrences then accumulated two more after the last manager review; which – in the abstract – would

² As requested, we provide you a sample copy of Walmart’s previous Attendance/Punctuality Policy (last modified on February 15, 2012), which Walmart used before the current Updated April 29, 2013 Policy (“Updated Policy”) that Walmart applied to the JWO Associates. [Tab 33.] The Updated Policy does not contain any substantive changes from the previous Policy. The Updated Policy adds the term “unauthorized absences” to define “full day absences” and “incomplete shifts,” which Walmart previously termed “occurrences” (a term Walmart still uses to track associate unauthorized absences). The Updated Policy does not change how the Company will hold associates accountable for full-day absences and incomplete shifts or how it will issue disciplinary action based on the level of occurrences. The Updated Policy adds a chart to further explain what constitutes an occurrence and to explain the disciplinary process. With respect to the “no call/no show” provision, the Updated Policy fixes a typo from the previous Policy to confirm that if an associate is absent from a scheduled shift and does not report it by calling the Associate Information Line (or “Interactive Voice Response” or “IVR” system), the associate “will be subject to disciplinary action beginning at the ‘Second’ Written coaching level if you have no other active coachings, or at the next available coaching level if you have an active coaching.” Walmart held the JWO Associates accountable based on the Updated Policy (as well the previous Policy) as it did similarly-situated associates.

warrant a First Written Coaching under the Policy). In that situation, a manager will often give the personal discussion reminder first instead of discipline and then administer discipline (if necessary) on a going-forward basis. Conversely, if an associate clearly understands the attendance rules (perhaps through prior, but “inactive,” attendance-discipline or long tenure), management may skip the personal discussion as inapplicable, depending on the circumstances.

b. Managers Used Scripted “Talking Points” To Tell Associates About The Company’s Position On Future IWS Incidents.

As a result of the numerous UFCW-coordinated hit-and-run work stoppages across the country in October and late-November 2012, various associates (including many of the JWO Associates who participated in the UFCW’s Ride-for-Respect media event) failed to work their scheduled shifts, and Walmart would normally have recorded those absences as unexcused “occurrences” under the Attendance/Punctuality Policy. Dependent on their current number of occurrences within that six-month rolling period, Walmart normally would have disciplined many of those associates under its Coaching for Improvement Policy. However, Walmart withheld judgment while it analyzed the factual and legal issues. Because of the numerous places and times that the UFCW orchestrated its intermittent work stoppages during October and November, it took the Company several weeks to collect all the information from across the country about the work stoppages and several more weeks to analyze the legal issues involved in that activity. Based on its analysis of Board and appellate court law, Walmart concluded by late-January 2013 that those prior hit-and-run intermittent work stoppages did not constitute protected activity and that it could lawfully discipline those associates who incurred unexcused absences in excess of what the attendance policy permitted.

Nevertheless, because of the time it took to collect and analyze all of the information from across the country, Walmart decided not to discipline those associates who engaged in the October and November intermittent work stoppages. Instead, Walmart decided to meet individually with each associate to explain the Company’s position (that it did not believe the hit-and-run intermittent work stoppages constituted protected activity) and that the Company would not excuse UFCW-orchestrated IWS absences in the future. Walmart provided its store managers with Talking Points to use with those associates in February 2013. [Tab 34.] Walmart instructed the managers to read the Talking Points verbatim and not add anything else.

c. The February Talking Points Said Walmart Would Apply The Attendance Policy To Future IWS.

After explaining that “the Company has decided that it will not apply the attendance policy to [the associates’] work absence because of the time it took to collect and analyze all the information from across the country,” Walmart managers read verbatim the following to associates from the Talking Points:

But it is very important for you to understand that the Company does not agree that these hit-and-run work stoppages are protected, and now that it has done the legal thinking on the subject, it will not excuse them in the future.

Should you participate in further union-orchestrated intermittent work stoppages that are part of a common plan or design to disrupt and confuse the Company's business operations, you should expect that the Company will treat any such absence as it would any other unexcused absence.

Having said that, let me explain that the Company respects your right to support a union and to engage in other protected concerted activity. It also respects your right to not engage in such activity.

But the Company does not believe that these union-orchestrated hit-and-run work stoppages are protected activity.

The managers had additional FAQs to use if associates asked questions. [*Id.*]

d. Management At The Ten Stores Read The Talking Points Verbatim And Did Not Tell Associates They Would Be Disciplined For Engaging In Protected Activity.

The managers at the ten stores identified by the Region followed the same protocol and read the Talking Points, and if necessary the FAQs, word-for-word and did not add anything of their own. None of the managers told any associates that they would be disciplined for engaging protected activity. [*Id.*]

(1) *Fremont, California – Store 2989.*

(b) (6), (b) (7)(C) met with JWO Associate (b) (6), (b) (7)(C) in February 2013 to review the Talking Points. (b) (6), (b) (7)(C) observed the meeting as a witness. (b) (6), (b) (7)(C) read the Talking Points verbatim. [*Id.*] (b) (6), (b) (7)(C) did not ask any questions.

(2) *Paramount, California – Store 2110.*

(b) (6), (b) (7)(C) read the Talking Points verbatim to associates who missed assigned work for the Black Friday IWS. [*Id.*] The associates included (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) observed the meetings. None of the associates asked any questions during the meetings. Notably, none of the JWO Associates work at store 2110.

(3) *Placerville, California – Store 2418.*

(b) (6), (b) (7)(C) read the Talking Points verbatim to JWO Associate (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) observed the meeting. After (b) (6), (b) (7)(C) read the Talking Points, (b) (6), (b) (7)(C) said that (b) (6), (b) (7)(C) had been told that Walmart could not discipline (b) (6), (b) (7)(C) for the Black Friday incident. In response, (b) (6), (b) (7)(C) read the corresponding answer on Walmart's pre-written FAQs. Specifically, (b) (6), (b) (7)(C) stated "The Company certainly would not discipline you for engaging in activity protected by federal labor laws. But the law does not protect these hit-

and-run intermittent work stoppages that are part of an overall union-orchestrated plan to disrupt, harass, and confuse our business operations.” [Tab 35.] (b) (6), (b) (7)(C) logged (b) (6), (b) (7)(C) conversation with (b) (6), (b) (7)(C) by noting details on the Talking Points and FAQs (b) (6), (b) (7)(C) used with (b) (6), (b) (7)(C). [Id.]

(4) *Richmond, California – Store 3455.*

(b) (6), (b) (7)(C) read the Talking Points verbatim to JWO Associate (b) (6), (b) (7)(C) [Tab 34.] (b) (6), (b) (7)(C) observed the meeting. (b) (6), (b) (7)(C) asked a couple questions about discipline. (b) (6), (b) (7)(C) responded with the pre-written answers from the FAQ document. Neither (b) (6), (b) (7)(C) nor (b) (6), (b) (7)(C) said anything else and the meeting ended.

(5) *Evergreen Park, Illinois – Store 5485.*

(b) (6), (b) (7)(C) read the Talking Points verbatim to JWO Associate (b) (6), (b) (7)(C) [Id.] A (b) (6), (b) (7)(C) observed the meeting. (b) (6), (b) (7)(C) did not ask any questions. (b) (6), (b) (7)(C) did not add anything to the Talking Points.

(6) *Glenwood, Illinois – Store 5404.*

(b) (6), (b) (7)(C) read the Talking Points word-for-word to JWO Associate (b) (6), (b) (7)(C) [Id.] (b) (6), (b) (7)(C) observed the meeting. After listening to the Talking Points, (b) (6), (b) (7)(C) asked three questions. First, (b) (6), (b) (7)(C) asked if (b) (6), (b) (7)(C) could have a copy of the Talking Points. The (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) could not have a copy but that they could review the Talking Points again together if (b) (6), (b) (7)(C) liked. Second, (b) (6), (b) (7)(C) asked where (b) (6), (b) (7)(C) could find NLRB information regarding intermittent work stoppages. The (b) (6), (b) (7)(C) referred (b) (6), (b) (7)(C) to the NLRB’s website, www.nlrb.gov. Third, (b) (6), (b) (7)(C) asked if Walmart’s attendance policy mentioned intermittent work stoppages. The (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that the policy does not mention intermittent work stoppages, but that it explains unexcused absences and provides several examples.

(7) *Baker, Louisiana – Store 1102.*

(b) (6), (b) (7)(C) did not read the Talking Points (or FAQs) to any associates at this store in February 2013.

(8) *Laurel, Maryland – Store 1985.*

(b) (6), (b) (7)(C) read the Talking Points verbatim to JWO Associate (b) (6), (b) (7)(C) [Id.] (b) (6), (b) (7)(C) observed the meeting. (b) (6), (b) (7)(C) asked a few general questions about discipline and (b) (6), (b) (7)(C) responded by answering directly from the pre-prepared FAQs provided to the managers to use if necessary. [Id.]

(9) *Lancaster, Texas – Store 471.*

(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) met individually with JWO Associates (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) read them the Talking Points verbatim. [Tab 35.] Neither (b) (6), (b) (7)(C) nor (b) (6), (b) (7)(C) asked any questions. After (b) (6), (b) (7)(C) finished reading the Talking Points, the meetings ended.

(10) *Federal Way, Washington – Store 2571.*

(b) (6), (b) (7)(C) read the Talking Points verbatim to several associates who had previously participated in the UFCW-orchestrated IWS. [*Id.*] With respect to the JWO Associates, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) met individually with (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). After (b) (6), (b) (7)(C) read the Talking Points, none of the JWO Associates asked any questions, and the meetings ended.

11. After The Moratorium Ended, The UFCW Quickly Announced Another “National Day of Action” On April 24, 2013.

As soon as the NLRB-imposed demonstration moratorium ended, the UFCW announced another “National Day of Action” that called for disruptive in-store demonstrations around the country on April 24, 2013. *See* www.corporateactionnetwork.org/campaign_materials/316. The UFCW branded its April 24th Day of Action as a day to: “Give Workers the Hours They Need to Survive.” *See* www.corporateactionnetwork.org/campaigns/give-workers-the-hours-they-need-to-survive/campaign_materials. Consistent with its raise-the-bar Walmart-campaign theme, the UFCW asked demonstrators that day to focus on pressuring Walmart to give workers “flexible, consistent scheduling and adequate hours.” *Id.* The UFCW conducted disruptive demonstrations that day in support of its scheduling-specific messaging. [*See, e.g.,* April 24, 2013 video of Kissimmee, Florida in-store flash mob, included at Tab 8.] However, the UFCW did not orchestrate work stoppages with those demonstrations.

12. The UFCW Orchestrated Another IWS On May 6, 2013.

On May 6, 2013, at Store 471 in Lancaster, Texas, (b) (6), (b) (7)(C) again walked off the job without completing their shift and provided management the same generic UFCW-drafted “walk-out” letters and then a few days later, submitted the same generic, UFCW-drafted “return to work” letters used since October 2012. [Tabs 11, 16.]

13. Several Associates Walked Off The Job In Late-May/Early-June 2013 To Participate In UFCW Educational Meetings And Media Events.

In May 2013, the UFCW began promoting a series of educational and organizational meetings and media events that it dubbed a “National Week of Action,” scheduled for May 30-June 7, 2013. [Tab 36.] The UFCW announced a “Ride for Respect” as the centerpiece of its National Week of Action, and it called for Walmart associates to walk off the job to participate and help draw media attention to its continuing generic calls for improved working conditions and a boilerplate demand for an end to purported generic retaliation. [*Id.*]

a. The UFCW Describes Its Ride for Respect As An “Education Program Meant To Educate Workers And Communities.”

The UFCW (through OURWalmart) formulated a “Ride for Respect” media and education initiative during a five-day “organizing training and strategy summit” in Birmingham, Alabama. [Eidelson, Josh, *The Nation*, May 5, 2013, Tab 37.] As described by the UFCW, they would “send civil rights movement-style caravans of workers from around the country to converge at the retail giant’s June 7 annual shareholding meeting.” [*Id.*] The UFCW expressly

described the “Ride for Respect” as a “massive education program meant to educate Walmart workers and communities about the issues of Walmart.” [Eidelson, Josh, (b) (6), (b) (7)(C) 2013 (quoting UFCW official (b) (6), (b) (7)(C)), Tab 38.] The UFCW also intended the “Ride for Respect” to serve as a pro-labor alternative meeting to Walmart’s “Associate Appreciation Week,” which Walmart hosts annually in the week leading up to Walmart’s Shareholder Meeting. [Id.]

According to the UFCW’s website (<http://www.uncw.org/2013/05/30/our-walmart-members-prepare-caravans-and-actions-leading-up-to-walmarts-shareholders-meeting>): “Several days before the shareholder meeting, ‘Ride for Respect’ caravans will leave from cities across the country, including Seattle, the San Francisco Bay Area, Los Angeles, Chicago, Denver, Miami, Orlando and Baton Rouge, among others. As OUR Walmart members make their way to Bentonville, Ark., they will *hold actions at Walmart stores, talk to associates about OUR Walmart, and also stop to meet with local unions and supportive community organizations.*” (Emphasis added.)

Another UFCW press release states, “OURWalmart members and their supporters are also bringing their message directly to members of the Board and the Walton family, before they arrive in Bentonville – *speaking at shareholder meetings of other companies where Walmart Directors also sit, and at public speaking events and fundraisers where Board members are present.*” <http://makingchangeatwalmart.org/2013/05/06/our-walmart-announces-plans-to-take-their-concerns-to-walmarts-hq/#sthash.51abukrt.dpuf> (Emphasis added.)

(b) (6), (b) (7)(C) an OURWalmart leader, described the Ride for Respect as a sort-of national convention of our OURWalmart supporters:

We came up with a great idea to start the caravan you know from all over the country. We’re going to bring all of our leaders from all over, we’re going to make several stops along the way, stopping by community supporters, by religious supporters, you know just anywhere and somebody could come and help us out. We’re going to stop and talk and pass out information along the way to Bentonville. You know that’s the showdown at the shareholders meeting but we’re going to plan it and we’re going to iron out all the logistics and we’re going to be leaving by the 28th of June [sic] you know we’re going to be leaving, there’s going to be a two-week caravan and we’re going to be travelling, picking up everybody along the way and meet up and then go to Bentonville.

[<http://www.ustream.tv/recorded/32459273>, May 5, 2013.]

(b) (6), (b) (7)(C) testified that the UFCW paid for all the buses and the participants’ lodging. [Tab 2 (219:5-20).]

b. The UFCW Staged “Send Off” Events For The Media.

The UFCW coordinated with local community groups to stage media events to showcase the UFCW’s “educational” campaign.

Some prominent “send off” events included:

- Washington, D.C.: A community organization known as “Respect DC” held a send-off event on May 29 at the Florida Avenue Baptist Church. Respect DC described the event as a “chance to send OURWalmart members . . . off to Bentonville with a prayer breakfast, pep rally!” The group stated, “[w]e will provide the food, coffee, entertainment and (OURWalmart green) pom poms. Just bring yourself, your friends, and a lot of early morning energy!” [Respect DC Invitation, Tab 39.]
- San Francisco, CA: A community organization known as San Francisco Jobs with Justice, held a send-off party on May 29. The event started with a march from a Walmart director’s residence to the GAP flagship store. Then the group planned to “keep our movement going strong from 6pm – 7:30pm with DJ Sake One (Local 1200), Power Struggle, and OURWalmart leader Dominic Ware throwing down rhymes!!” The send-off party included: “Food and drink by PODER, MacArther Garage Brewery, and Justice Grace Vineyards.” [SF Jobs with Justice Invitation, <http://laborrights.org/print/13318>.]
- Central Florida: A union local held a barbeque event to send off their local contingent of “Ride for Respect” participants. [<http://peoplesworld.org/union-bbqs-for-strikers-on-way-to-walmart-shareholders-meet>.]
- Chicago, IL: Associate Tyrone Robinson participated in the Ride for Respect send-off festivities and speech-making outside the store.
https://www.youtube.com/watch?feature=player_embedded&v=8RqAHhykSJo.

c. The UFCW Caravans Stopped In Multiple Cities For Lunches, Panel Discussions, And Photo-Ops.

After departing in late-May from their origination cities, the various OURWalmart groups drove to different cities where they held photo-ops and picked up new participants. For example, the OURWalmart group originating in Los Angeles, stopped in Phoenix, and New Mexico. At each stop, they took pictures, picked up more participants, and met with local labor and community groups. As another example, the OURWalmart group originating in Chicago stopped in Cincinnati for lunch and a panel discussion with local community groups. See <http://makingchangeatwalmart.org/2013/06/02/almost-to-bentonville-and-not-slowng-own>. In a blog of the event, OURWalmart quoted one participant regarding the bus portion of the trip: “The bus is cool because we are allowed to stretch our legs and the actions along the way.” See <http://makingchangeatwalmart.org/2013/05/29/day-1-on-the-ride-for-respect>.

d. Once In Bentonville, OURWalmart Held Organizational And Public-Relations Events.

The caravans began arriving in Bentonville on or about June 2. Once the groups arrived, OURWalmart sponsored a series of educational and public relations events leading up to Walmart’s Annual Shareholder’s Meeting. On June 3, OURWalmart held an “inspirational”

meeting with Dolores Huerta, a representative of the United Farmworkers. In that meeting, Ms. Huerta made a speech to OURWalmart supporters and took questions from the crowd. On the same day, OURWalmart supporters massed in front of the Home Office for a photo-op, where they held signs and placed masking tape over their mouths for maximum visual impact. On June 4, OURWalmart representatives visited Jim Walton's house in Bentonville where they symbolically presented him [in abstentia] with an oversize check – a common prop for photo-ops. On June 5, the group visited the Crystal Bridges Museum, where they held another photo-op presenting a "Rosie the Riveter" sign to the museum director. The group also took pictures inside the museum, including in front of its "Rosie the Riveter" painting. The group then made speeches and toured the grounds of the museum. Later that week, the group spent a day marching through downtown Bentonville, where they took pictures in front of the original Walmart store, held "interfaith prayer sessions," and massed in downtown Bentonville's parks and public spaces. Then the group held another meeting at the Home Office where they asked the company to sign an international accord on fire safety relating to overseas suppliers (having nothing to do with Walmart associates' working conditions). Throughout the week, the participants spent considerable time in internal meetings, where supporters discussed the significance of the Civil Rights Movement and how the 1960s "Freedom Rides" compared to OURWalmart's "Ride for Respect." [Tab 40.]

e. OURWalmart's Ride For Respect Culminated In A UFCW/OURWalmart's Shareholder Proposal.

The "Ride for Respect" culminated in UFCW/OURWalmart's formal participation in Walmart's Annual Shareholder Meeting. An OURWalmart representative – with UFCW supporters in attendance – made a formal shareholder proposal to limit executive compensation. (a subject wholly-unrelated to associate terms and conditions of employment). See <http://makingchangeatwalmart.org/2012/06/01/more-than-200-events-planned-in-cities-around-the-country-leading-up-to-walmart-shareholders-meeting-june-1st/>.

f. The UFCW's Ride For Respect Participants Turned In The UFCW's Same Generic Strike And Return-To-Work Letters.

Numerous Walmart associates participated in the UFCW's June walk-off activity during that week, and the vast majority submitted the same UFCW-drafted strike and return-to-work letters. [Tabs 9, 10, 11.] Indeed, most of the JWO Associates provided management those letters (many provided both a strike and return to work letter, but some did not provide a strike letter at all). [Tab 11.] Notably, as before, those same generic letters only informed management that the JWO Associates intended to strike for one day: "*Today*, we the Associates whose signatures appear below, will not be working." [*Id.* (emphasis added).] Additionally, many of those JWO Associates did not provide the initial strike letter to their management until several days after they had already failed to report to work for several of their scheduled shifts. [*Id.*]

B. Store Management Uniformly Applied The Attendance Policy To The JWO Associates In The Same Manner As Similarly Situated Associates.

1. Store Management Disciplined Numerous Other Associates At JWO Associates' Stores For Similar Attendance Violations.

Store management at the stores where JWO Associates work or worked applied the Company's Attendance/Punctuality Policy to other similarly-situated associates. In fact, in the last two years from July 1, 2011 to July 1, 2013, management at those stores issued a total of 6,689 coachings to associates for violating the Attendance/Punctuality Policy. [Tab 41.] Those total coachings encompass all three levels of coachings under the Company's Coaching for Improvement Policy. In particular, during that two year period, management at those stores issued 3,005 First Written Coachings, 2,239 Second Written Coachings, and 1,445 Third Written Coachings. [Id.] Additionally, management at those stores discharged over 2,900 associates for attendance-related violations. [Tab 42.] Specifically, during that two year period, store management discharged 2,107 associates for no call/no shows, 810 associates for excessive absences, and 58 for attendance-related misconduct with coachings. [Id.]

2. Store Management Similarly Applied The Attendance/Punctuality Policy To JWO Associates.

As described on a store-by-store basis below, store management applied the same Attendance/Punctuality and Coaching for Improvement Policies to JWO Associates (as listed in the Charge and your correspondence) for their (1) failure to work scheduled shifts while participating in the UFCW's "Ride for Respect" education and media events, and (2) where appropriate, for their failure to report absences as required by the same Policy. Notably, some of the JWO Associates did not receive any discipline at all based on the status of their attendance and prior-disciplinary history. In those cases, management merely reminded them of the Company's Attendance/Punctuality Policy. In all cases where management issued discipline or discharge to JWO associates, they read from pre-prepared Talking Points, which they read verbatim to the associates. [Tab 43.]

(1) Fremont, California – Store 2989.

(b) (6), (b) (7)(C) faxed the generic UFCW-supplied "walk off" letter to (b) (6), (b) (7)(C) and called the IVR system on (b) (6), (b) (7)(C) 2013 [Tabs 11, 26.]. (b) (6), (b) (7)(C) did not work scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C). Although (b) (6), (b) (7)(C) unexcused absences warranted the next level of discipline, management determined that it had not consistently applied the attendance policy at the store during the prior few months. Consequently, store management did not discipline (b) (6), (b) (7)(C) at all. Management simply reminded (b) (6), (b) (7)(C) about the attendance policy as part of a personal discussion.

In the past two years, store management has issued 70 coachings and discharged 50 associates for attendance-related violations at that store. [Tabs 41, 42.]

(2) Lakewood, California – Store 2609.

(b) (6), (b) (7)(C) faxed the generic UFCW-supplied “walk off” letter to the Lakewood store and called the IVR on (b) (6), (b) (7)(C), 2013. [Tabs 11, 26.] (b) (6), (b) (7)(C) did not work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) submitted a generic UFCW-supplied “return-to-work” letter to (b) (6), (b) (7)(C) manager when (b) (6), (b) (7)(C) returned on (b) (6), (b) (7)(C). At the time of (b) (6), (b) (7)(C) return, (b) (6), (b) (7)(C) already had a Third Written Coaching. [Tab 44.] Thus, based on (b) (6), (b) (7)(C) multiple unexcused absences during the (b) (6), (b) (7)(C) period, management discharged (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C). [Id.]

In the past two years, store management has issued 247 coachings and discharged 84 associates for attendance-related violations at that store. [Tabs 41, 42.]

(3) Pico Rivera, California – Store 2886.

In (b) (6), (b) (7)(C) 2013, (b) (6), (b) (7)(C) did a normal, routine attendance review for (b) (6), (b) (7)(C) department. Based on that review, (b) (6), (b) (7)(C) coached several employees for attendance issues, including two participants in the Ride for Respect (b) (6), (b) (7)(C) [Tab 44.]

(b) (6), (b) (7)(C) faxed a generic UFCW-supplied “walk off” letter to management dated (b) (6), (b) (7)(C) [Tab 11.] At the time (b) (6), (b) (7)(C) walked out, (b) (6), (b) (7)(C) had no active coachings in (b) (6), (b) (7)(C) personnel file. (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) called the IVR each day that (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts. [Tab 26.] (b) (6), (b) (7)(C) faxed the store a generic UFCW-supplied “return to work” letter dated (b) (6), (b) (7)(C) [Tab 11.] On (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) gave (b) (6), (b) (7)(C) a First Written Coaching for attendance covering multiple prior unexcused absences (so many that (b) (6), (b) (7)(C) decided to administer a First Written Coaching rather than a courtesy reminder; usually used when an associate accumulates the first few occurrences). [Tab 44.]

(b) (6), (b) (7)(C) signed the same generic UFCW-supplied “walk off” letter faxed to management on (b) (6), (b) (7)(C) [Tab 11.] At the time (b) (6), (b) (7)(C) walked out, (b) (6), (b) (7)(C) had no active coachings in (b) (6), (b) (7)(C) personnel file. (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) and provided the same UFCW-supplied generic return to work letter dated “(b) (6), (b) (7)(C)” [Tab 11.] As with (b) (6), (b) (7)(C), after performing (b) (6), (b) (7)(C) routine attendance review, on (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) gave (b) (6), (b) (7)(C) a First Written Coaching for attendance covering multiple prior unexcused absences. [Tab 44.]

(b) (6), (b) (7)(C) did not participate in the “Ride for Respect.” Nor did (b) (6), (b) (7)(C) provide the generic “walk off” or “return-to-work” letters as did others who participated in the “Ride for Respect.” In fact, (b) (6), (b) (7)(C) worked (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) 2013 (days in which the “Ride for Respect” took place). [Tab 16.] However, (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) 2013. (b) (6), (b) (7)(C) had a poor history of attendance violations, and by (b) (6), (b) (7)(C), already had a Third Written Coaching for excessive attendance occurrences under the attendance policy. (b) (6), (b) (7)(C) previous First and Second Written Coachings also related to violations of the attendance policy. [Tab 44.] Consequently, management issued (b) (6), (b) (7)(C) the next level of coaching for (b) (6), (b) (7)(C) failure to work the above shifts, which

resulted in (b) (6), (b) (7)(C) discharge. [Id.] However, that discharge decision did not relate to the UFCW-orchestrated (b) (6), (b) (7)(C) walk-offs.

In the past two years, store management has issued 256 coachings and discharged 70 associates for attendance-related violations at that store. [Tabs 41, 42.] In particular, (b) (6), (b) (7)(C) disciplined other similarly-situated associates in the same manner as (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) on the same day. [Tab 45.]

(4) *Placerville, California – Store 2418.*

(b) (6), (b) (7)(C) called the IVR system on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) to report (b) (6), (b) (7)(C) absences on those days. [Tab 26.] (b) (6), (b) (7)(C) did not provide any reason for (b) (6), (b) (7)(C) unexcused absence on that day. [Id.] Nor did (b) (6), (b) (7)(C) submit any UFCW-supplied “walk off” letter to show that (b) (6), (b) (7)(C) intended to attend the Ride for Respect. (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] At the time of (b) (6), (b) (7)(C) return, (b) (6), (b) (7)(C) already had a Third Written Coaching. [Tab 44.] Thus, based on (b) (6), (b) (7)(C) multiple no call/no shows during the (b) (6), (b) (7)(C) period, management discharged (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) under the no call/no show category “Job Abandonment/3 Days Unreported Absence.” [Id.]

(b) (6), (b) (7)(C) also did not provide management the generic UFCW-supplied “walk off” letter. (b) (6), (b) (7)(C) called the IVR on (b) (6), (b) (7)(C) but provided no reason for (b) (6), (b) (7)(C) unexcused absence on that day. [Tab 26.] (b) (6), (b) (7)(C) never told store management that (b) (6), (b) (7)(C) was attending the Ride for Respect. (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) and provided management the generic UFCW-supplied “return-to-work” letter. [Tab 11.] At the time of (b) (6), (b) (7)(C) return, (b) (6), (b) (7)(C) had no active coachings in (b) (6), (b) (7)(C) personnel file. However, based on (b) (6), (b) (7)(C) multiple no call/no shows during the (b) (6), (b) (7)(C) period, management discharged (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) under the no call/no show category “Job Abandonment/3 Days Unreported Absence.” [Tab 44.]

(b) (6), (b) (7)(C) also did not provide management the generic UFCW-supplied “walk off” letter. (b) (6), (b) (7)(C) called the IVR system on (b) (6), (b) (7)(C) but provided no reason for (b) (6), (b) (7)(C) unexcused absences from work on that day. [Tab 26.] (b) (6), (b) (7)(C) never told store management that (b) (6), (b) (7)(C) was attending the Ride for Respect. (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] Before (b) (6), (b) (7)(C) failed to report to work, (b) (6), (b) (7)(C) already had a Second Written Coaching, which (b) (6), (b) (7)(C) received for attendance violations. [Tab 44.] Based on (b) (6), (b) (7)(C) additional, multiple no call/no shows during the (b) (6), (b) (7)(C) period, management discharged (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) under the no call/no show category “Job Abandonment/3 Days Unreported Absence.” [Id.]

(b) (6), (b) (7)(C) did not provide management the generic UFCW-supplied “walk off” letter. (b) (6), (b) (7)(C) called the IVR system on (b) (6), (b) (7)(C) but provided no reason for (b) (6), (b) (7)(C) unexcused absence from work on that day. [Tab 26.] Unlike (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) called the store and read the generic UFCW-supplied “walk off” letter to store management over the phone. (b) (6), (b) (7)(C) then failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] Before (b) (6), (b) (7)(C) called out, (b) (6), (b) (7)(C) did not have any coachings in (b) (6), (b) (7)(C) personnel file. However, based on the number of unexcused absences (b) (6), (b) (7)(C) incurred from (b) (6), (b) (7)(C) and based on (b) (6), (b) (7)(C) previous

attendance occurrences, management gave (b) (6), (b) (7)(C) a First Written Coaching when (b) (6), (b) (7)(C) returned to work. [Tab 44.]

(b) (6), (b) (7)(C) did not provide management the generic UFCW-supplied “walk off” letter. (b) (6), (b) (7)(C) called the IVR system on (b) (6), (b) (7)(C) but provided no reason for (b) (6), (b) (7)(C) unexcused absence from work on that day [Tab 26.] Like (b) (6), (b) (7)(C) called the store and read the generic UFCW-supplied “walk off” letter to store management over the phone. (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) [Tab 16.] Before (b) (6), (b) (7)(C) called out, (b) (6), (b) (7)(C) did not have any coachings in (b) (6), (b) (7)(C) personnel file. However, based on the number of unexcused absences (b) (6), (b) (7)(C) incurred from (b) (6), (b) (7)(C) and based on (b) (6), (b) (7)(C) prior unexcused absences, management gave (b) (6), (b) (7)(C) a First Written Coaching when (b) (6), (b) (7)(C) returned to work. [Tab 44.]

(b) (6), (b) (7)(C) gave two weeks’ notice of (b) (6), (b) (7)(C) intent to quit on (b) (6), (b) (7)(C) 2013. At the same time, (b) (6), (b) (7)(C) also told store management that (b) (6), (b) (7)(C) would spend the next two weeks attending the “Ride for Respect” education and media events. (b) (6), (b) (7)(C) never called into the IVR system to report (b) (6), (b) (7)(C) absences. During that time, (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) already scheduled shifts on (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) [Tab 16.] On (b) (6), (b) (7)(C) came to the store and read the generic UFCW-supplied “return to work” letter. [Tab 11.] (b) (6), (b) (7)(C) told management that (b) (6), (b) (7)(C) wanted to rescind (b) (6), (b) (7)(C) earlier two-week notice, and the store allowed (b) (6), (b) (7)(C) to do so. (b) (6), (b) (7)(C) returned to work the following day. [Tab 16.] However, based on (b) (6), (b) (7)(C) numerous unexcused absences from (b) (6), (b) (7)(C) management issued the next level of coaching due (b) (6), (b) (7)(C) a Second Written Coaching. [Tab 44.] Notably, (b) (6), (b) (7)(C) First Written Coaching was also for excessive unexcused absences. [Id.] On (b) (6), (b) (7)(C) officially quit (b) (6), (b) (7)(C) job – this time for real – to (b) (6), (b) (7)(C). [Id.]

In the past two years, store management has issued 59 coachings and discharged 47 associates at that store for attendance-related violations – 35 under the no call/no show category “Job Abandonment/3 Days Unreported Absences.” [Tabs 41, 42.]

(5) *Richmond, California – Store 3455.*

Walmart hired (b) (6), (b) (7)(C) to work as an overnight stocker on (b) (6), (b) (7)(C). In early (b) (6), (b) (7)(C) 2013, (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shift and failed to either call the IVR or talk to management. Consequently, under the Company’s no call/no show procedures, management skipped the initial level of discipline and issued (b) (6), (b) (7)(C) a Second Written Coaching for attendance on (b) (6), (b) (7)(C) 2013. [Tab 44.] (b) (6), (b) (7)(C) attendance did not improve as (b) (6), (b) (7)(C) incurred six unexcused absences and 10 tardies in a six month rolling period. As such, management gave (b) (6), (b) (7)(C) a Third Written Coaching for attendance on (b) (6), (b) (7)(C) 2013. [Id.] (b) (6), (b) (7)(C) also did not perform (b) (6), (b) (7)(C) duties very well. On about (b) (6), (b) (7)(C) after a shift where (b) (6), (b) (7)(C) did not perform (b) (6), (b) (7)(C) tasks satisfactorily, (b) (6), (b) (7)(C) called (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) office to discharge (b) (6), (b) (7)(C). However, (b) (6), (b) (7)(C) refused to come to (b) (6), (b) (7)(C) office and left the store instead. As (b) (6), (b) (7)(C) left, (b) (6), (b) (7)(C) told his co-workers that “I’m fired.” (b) (6), (b) (7)(C) recorded (b) (6), (b) (7)(C) discharge in the personnel system on (b) (6), (b) (7)(C) for “Inability to Perform Job.” [Tab 44.]

(b) (6), (b) (7)(C) never gave the generic UFCW-supplied "walk off" letter to management. At the time of (b) (6), (b) (7)(C) discharge, (b) (6), (b) (7)(C) had no idea that (b) (6), (b) (7)(C) supported OURWalmart or that (b) (6), (b) (7)(C) planned to attend the Ride for Respect. To Walmart's knowledge, (b) (6), (b) (7)(C) never got involved with OURWalmart until after (b) (6), (b) (7)(C) discharge on (b) (6), (b) (7)(C) for poor performance. On (b) (6), (b) (7)(C) gave store management the same generic UFCW-supplied "return to work" letter saying that (b) (6), (b) (7)(C) had been on strike since (b) (6), (b) (7)(C) [Tab 11], but management had already discharged (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) faxed a generic UFCW-supplied "walk off" letter to management dated (b) (6), (b) (7)(C) [Tab 11.] At the time (b) (6), (b) (7)(C) called out, (b) (6), (b) (7)(C) had a Third Written Coaching in (b) (6), (b) (7)(C) file. [Tab 44.] (b) (6), (b) (7)(C) failed to work his (b) (6), (b) (7)(C) shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) and provided management the generic UFCW-supplied "return to work" letter dated (b) (6), (b) (7)(C) [Tab 11.] Based on (b) (6), (b) (7)(C) unexcused absences between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) returned, management issued the next level of coaching, which resulted in (b) (6), (b) (7)(C) discharge. [Tab 44.]

In the past two years, store management has issued 93 coachings and discharged 58 associates for attendance-related violations at that store. [Tabs 41, 42.]

(6) *San Leandro, California – Store 5434.*

(b) (6), (b) (7)(C) repeatedly violated the attendance policy long before the Ride for Respect. In fact, management issued (b) (6), (b) (7)(C) a First Written Coaching in (b) (6), (b) (7)(C) 2013 and a Second Written Coaching in (b) (6), (b) (7)(C) 2013, both for excessive unexcused absences. [Tab 44.] On (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) faxed the generic UFCW-supplied "walk off" letter to management. [Tab 11.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on June 1, 2, 3, 4, and 8. [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) at which time (b) (6), (b) (7)(C) provided management with the generic UFCW-supplied "return-to-work" letter. [Tab 11.] Based on (b) (6), (b) (7)(C) coaching level at the time and (b) (6), (b) (7)(C) multiple unexcused absences from (b) (6), (b) (7)(C) management issued (b) (6), (b) (7)(C) the next level coaching, a Third Written Coaching. [Tab 44.]

(b) (6), (b) (7)(C) also faxed a generic UFCW-supplied "walk off" letter to management dated (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) delivered a generic UFCW-supplied "return to work" letter to management dated (b) (6), (b) (7)(C) [Tab 11.] At the time (b) (6), (b) (7)(C) returned to work, (b) (6), (b) (7)(C) already had a Second Written Coaching (for Break and Meal Period violations). [Tab 44.] Consequently, based on (b) (6), (b) (7)(C) coaching level at the time and (b) (6), (b) (7)(C) multiple unexcused absences from (b) (6), (b) (7)(C) management issued (b) (6), (b) (7)(C) the next level coaching, a Third Written Coaching. [Id.]

In the past two years, store management has issued 193 coachings and discharged 146 associates for attendance-related violations at that store. [Tabs 41, 42.]

(7) *Hialeah, Florida – Store 1590.*

(b) (6), (b) (7)(C) gave the store the generic UFCW-supplied "walk off" letter dated (b) (6), (b) (7)(C) and called the IVR on (b) (6), (b) (7)(C) for (b) (6), (b) (7)(C) planned absence the following day. [Tabs 11, 26.] At the time (b) (6), (b) (7)(C) called out, (b) (6), (b) (7)(C) had a Third Written Coaching in (b) (6), (b) (7)(C) personnel file for attendance violations. [Tab 44.] Notably, management issued (b) (6), (b) (7)(C) a First Written Coaching also

for attendance problems back in (b) (6), (b) (7) 2012 – before management had any knowledge that (b) (6), (b) (7) supported OUR Walmart. [Id.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) at which time (b) (6), (b) (7)(C) delivered the generic UFCW-supplied “return to work” letter. [Tab 11.] Based on (b) (6), (b) (7)(C) unexcused absences between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) management issued (b) (6), (b) (7)(C) the next level of discipline, which resulted in (b) (6), (b) (7)(C) discharge on (b) (6), (b) (7)(C). [Tab 44.]

In the past two years, store management has issued 153 coachings and discharged 43 associates for attendance-related violations at that store. [Tabs 41, 42.]

(8) *North Miami Beach, Florida – Store 3235.*

(b) (6), (b) (7)(C) gave the store the generic UFCW-supplied “walk off” letter dated (b) (6), (b) (7) (b) (6), (b) (7)(C) went out, (b) (6), (b) (7)(C) had a Third Written Coaching for attendance. [Tab 44.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) delivered the generic UFCW-supplied “return to work” letter when (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) [Tab 11.] Although (b) (6), (b) (7)(C) unexcused absences warranted the next level of discipline (discharge), management determined that it had not consistently applied the attendance policy at the store during the prior few months. Consequently, store management did not discipline (b) (6), (b) (7)(C) at all. Management simply reminded (b) (6), (b) (7)(C) about the attendance policy as part of a personal discussion.

In the past two years, store management issued 372 coachings and discharged 144 associates for attendance-related violations at that store. [Tabs 41, 42.]

(9) *Chicago, Illinois – Store 5781.*

(b) (6), (b) (7)(C) signed an undated petition protesting working conditions on or about (b) (6), (b) (7) (b) (6), (b) (7)(C) but it did not say anything about not working or a “strike.” [Tab 46.] (b) (6), (b) (7)(C) did not provide the generic UFCW-supplied “walk off” letter. (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) called the IVR on (b) (6), (b) (7)(C) to note that (b) (6), (b) (7)(C) would not work on (b) (6), (b) (7)(C) but provided no reason for the unexcused absence. [Tab 26.] At the time (b) (6), (b) (7)(C) called out for that one day (b) (6), (b) (7)(C) had no coachings in (b) (6), (b) (7)(C) personnel file. (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C), at which time (b) (6), (b) (7)(C) submitted the generic UFCW-supplied “return to work” letter. [Tab 11.] Although (b) (6), (b) (7)(C) no-calls/no-shows warranted serious discipline, (b) (6), (b) (7)(C) had no prior attendance problems, no disciplinary history, only a few unexcused absences during a four day period, and no prior personal discussion on file. Consequently, store management did not discipline (b) (6), (b) (7)(C) but decided to give (b) (6), (b) (7)(C) a verbal personal discussion instead. [See Personal Discussions given to JWO Associates (indexed alphabetically) at Tab 47.] Store management has issued personal discussions to other similarly-situated associates. [Tab 48.]

In the past two years, store management has issued 594 coachings and discharged 242 associates for attendance-related violations at that store. [Tabs 41, 42.]

(10) *Crestwood, Illinois – Store 3601.*

(b) (6), (b) (7)(C) gave the store the generic UFCW-supplied “walk off” letter on (b) (6), (b) (7) (b) (6), (b) (7)(C) [Tab 11.] (b) (6), (b) (7)(C) also called the IVR for (b) (6), (b) (7)(C) unexcused absence on (b) (6), (b) (7)(C), but provided no

reason for the absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) but did not provide the generic UFCW-supplied "return to work" letter. Although (b) (6), (b) (7)(C) unexcused absences warranted progressive discipline, (b) (6), (b) (7)(C) had no prior attendance problems, no active disciplinary history, only a few unexcused absences during a one-week period, and no prior personal discussion on file. Consequently, store management did not discipline (b) (6), (b) (7)(C) but decided to give (b) (6), (b) (7)(C) a verbal personal discussion instead. [Tab 47.] Store management has issued personal discussions to other similarly-situated associates. [Tab 48.]

In the past two years, store management has issued 499 coachings and discharged 196 associates for attendance-related violations at that store. [Tabs 41, 42.]

(11) *Evergreen Park, Illinois – 5485.*

(b) (6), (b) (7)(C) signed an undated petition protesting working conditions on or about (b) (6), (b) (7)(C) but it did not say anything about not working or a "strike." [Tab 46.] (b) (6), (b) (7)(C) did not provide the generic UFCW-supplied "walk off" letter. (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). [Tab 16.] (b) (6), (b) (7)(C) called the IVR on (b) (6), (b) (7)(C) to note that (b) (6), (b) (7)(C) would not work (b) (6), (b) (7)(C) scheduled shift that day, but provided no reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) at which time (b) (6), (b) (7)(C) submitted the generic UFCW-supplied "return to work" letter. [Tab 11.] At the time (b) (6), (b) (7)(C) called out, (b) (6), (b) (7)(C) already had a Second Written Coaching for attendance violations. [Tab 44.] Although (b) (6), (b) (7)(C) unexcused absences warranted the next level of discipline, management determined that it had not consistently applied the attendance policy at the store during the prior few months. Consequently, store management did not discipline (b) (6), (b) (7)(C) at all. Management simply reminded (b) (6), (b) (7)(C) about the attendance policy as part of a personal discussion. [Tab 47.] Store management has issued personal discussions to other similarly-situated associates. [Tab 48.]

In the past two years, store management has issued 489 coachings and discharged 146 associates for attendance-related violations at that store. [Tabs 41, 42.]

(12) *Glenwood, Illinois – Store 5404.*

(b) (6), (b) (7)(C) signed an undated petition protesting working conditions on or about (b) (6), (b) (7)(C), but it did not say anything about not working or a "strike." [Tab 46.] (b) (6), (b) (7)(C) did not provide the generic UFCW-supplied "walk off" letter. (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). [Tab 16.] When (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) provided management the generic UFCW-supplied "return to work" letter. [Tab 11.] Although (b) (6), (b) (7)(C) unexcused absences warranted the next level of discipline, management determined that it had not consistently applied the attendance policy at the store during the prior few months. Consequently, store management did not discipline (b) (6), (b) (7)(C) at all. Management simply reminded (b) (6), (b) (7)(C) about the attendance policy as part of a personal discussion. [Tab 47.] Store management has issued personal discussions to other similarly-situated associates. [Tab 48.]

In the past two years, store management has issued 201 coachings and discharged 48 associates for attendance-related violations at that store. [Tabs 41, 42.]

(13) *Wheeling, Illinois – Store 1735.*

(b) (6), (b) (7)(C) signed an undated petition protesting working conditions on or about (b) (6), (b) (7)(C) but it did not say anything about not working or a “strike.” [Tab 46.] (b) (6), (b) (7)(C) did not provide the generic UFCW-supplied “walk off” letter. (b) (6), (b) (7)(C) called the IVR on (b) (6), (b) (7)(C) to note that (b) (6), (b) (7)(C) would not work (b) (6), (b) (7)(C) scheduled shift that day, but provided no reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] When (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) provided management the generic UFCW-supplied “return-to-work” letter. [Tab 11.] At the time (b) (6), (b) (7)(C) called out, (b) (6), (b) (7)(C) already had a Second Written Coaching and a previous First Written Coaching for attendance violations. [Tab 44.] Based on (b) (6), (b) (7)(C) unexcused absences from (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) returned to work, store management issued (b) (6), (b) (7)(C) the next level of coaching, which resulted in a Third Written Coaching. [Id.]

(b) (6), (b) (7)(C) signed an undated petition protesting working conditions on or about (b) (6), (b) (7)(C) but it did not say anything about not working or a “strike.” [Tab 48.] (b) (6), (b) (7)(C) did not provide the generic UFCW-supplied “walk off” letter. (b) (6), (b) (7)(C) called the IVR on (b) (6), (b) (7)(C) to note that (b) (6), (b) (7)(C) would not work (b) (6), (b) (7)(C) scheduled shift that day, but provided no reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] Before (b) (6), (b) (7)(C) called out, (b) (6), (b) (7)(C) had an active Third Written Coaching in (b) (6), (b) (7)(C) personnel file (notably, (b) (6), (b) (7)(C) Second Written Coaching was for attendance violations). [Tab 44.] Based on (b) (6), (b) (7)(C) unexcused absences from (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) returned to work, store management issued (b) (6), (b) (7)(C) the next level of coaching, which resulted in (b) (6), (b) (7)(C) discharge. [Id.]

In the past two years, store management has issued 146 coachings and discharged 81 associates for attendance-related violations at that store. [Tabs 41, 42.]

(14) *Paducah, Kentucky – Store 431.*

(b) (6), (b) (7)(C) gave store management the generic UFCW-supplied “walk off” letter dated (b) (6), (b) (7)(C). [Tab 11.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) at which time (b) (6), (b) (7)(C) provided management the generic UFCW-supplied “return-to-work” letter. [Tab 11.] Although (b) (6), (b) (7)(C) unexcused absences warranted the next level of discipline, management determined that (b) (6), (b) (7)(C) had no prior attendance problems, only a few unexcused absences within a week period, and no personal discussion on file. Consequently, store management did not discipline (b) (6), (b) (7)(C) at all. Management simply reminded (b) (6), (b) (7)(C) about the attendance policy as part of a personal discussion. [Tab 47.] Store management has issued personal discussions to other similarly-situated associates. [Tab 48.]

In the past two years, store management has issued 110 coachings and discharged 87 associates for attendance-related violations at that store. [Tabs 41, 42.]

(15) *Stanford, Kentucky – Store 825.*

(b) (6), (b) (7)(C) read a generic UFCW-supplied “walk off” letter to store management over the phone on (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) did not provide the generic UFCW-supplied “return to work” letter. Although (b) (6), (b) (7)(C) unexcused absences warranted the next

level of discipline, management determined that (b) (6) had no prior attendance problems, no active disciplinary record, only a few unexcused absences within a week period, and no personal discussion on file. Consequently, store management did not discipline (b) (6) at all. Management simply reminded (b) (6) about the attendance policy as part of a personal discussion. [Tab 47.] Store management has issued personal discussions to other similarly-situated associates. [Tab 48.]

In the past two years, store management has issued 154 coachings and discharged 48 associates for attendance-related violations at that store. [Tabs 41, 42.]

(16) *Baker, Louisiana – Store 1102.*

(b) (6), (b) (7)(C) gave management the generic UFCW-supplied “walk off” letter dated (b) (6), (b) (7)(C) called the IVR on (b) (6), (b) (7)(C) to note that (b) (6) would not work (b) (6), (b) (7)(C) scheduled shift that day, but provided no reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) [Tab 16.] When (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) provided management the generic UFCW-supplied “return to work” letter. [Tab 11.] (b) (6), (b) (7)(C) had significant attendance problems throughout (b) (6), (b) (7)(C) tenure with the store as far back as (b) (6), (b) (7)(C) [Tab 44.] Before (b) (6), (b) (7)(C) called out, (b) (6), (b) (7)(C) had an active Third Written Coaching in (b) (6), (b) (7)(C) personnel file for attendance violations and (b) (6), (b) (7)(C) Second Written Coaching and First Written Coaching were also for attendance violations. [Id.] Based on (b) (6), (b) (7)(C) unexcused absences from (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) returned to work, store management issued (b) (6), (b) (7)(C) the next level of coaching, which resulted in (b) (6), (b) (7)(C) discharge. [Id.]

(b) (6), (b) (7)(C) gave management the generic UFCW-supplied “walk off” letter dated (b) (6), (b) (7)(C) [Tab 11.] (b) (6), (b) (7)(C) called the IVR on (b) (6), (b) (7)(C) to note that (b) (6), (b) (7)(C) would not work (b) (6), (b) (7)(C) scheduled shift that day, but provided no reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) at which time (b) (6), (b) (7)(C) provided management the generic UFCW-supplied “return to work” letter. [Tab 11.] Although (b) (6), (b) (7)(C) unexcused absences warranted the next level of discipline, management determined that (b) (6), (b) (7)(C) had no prior attendance problems, only a few unexcused absences within a week, and no personal discussion on file. Consequently, store management did not discipline (b) (6), (b) (7)(C) at all. Management simply reminded (b) (6), (b) (7)(C) about the attendance policy as part of a personal discussion. [Tab 47.] Store management has issued personal discussions to other similarly-situated associates. [Tab 48.]

(b) (6), (b) (7)(C) gave management the generic UFCW-supplied “walk off” letter dated (b) (6), (b) (7)(C) called the IVR on (b) (6), (b) (7)(C) to note that (b) (6), (b) (7)(C) would not work (b) (6), (b) (7)(C) scheduled shift the following day, but provided no reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) at which time (b) (6), (b) (7)(C) provided management the generic UFCW-supplied “return to work” letter. [Tab 11.] At the time (b) (6), (b) (7)(C) called out, (b) (6), (b) (7)(C) had already received a personal discussion in (b) (6), (b) (7)(C). Accordingly, management issued (b) (6), (b) (7)(C) a First Written Coaching based on (b) (6), (b) (7)(C) unexcused absences from (b) (6), (b) (7)(C). [Tab 44.]

(b) (6), (b) (7)(C) gave management the generic UFCW-supplied "walk off" letter dated (b) (6), (b) (7)(C) called the IVR on (b) (6), (b) (7)(C) to note that (b) (6), (b) (7)(C) would not work (b) (6), (b) (7)(C) scheduled shift that day because of an illness/injury. [Tab 26.] (b) (6), (b) (7)(C) also called the IVR on (b) (6), (b) (7)(C) but provided no reason for (b) (6), (b) (7)(C) unexcused absence for that day. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] When (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) provided management the generic UFCW-supplied "return to work" letter. [Tab 11.] (b) (6), (b) (7)(C) had repeated attendance problems throughout (b) (6), (b) (7)(C) tenure with the store. [Tab 44.] At the time (b) (6), (b) (7)(C) called out, (b) (6), (b) (7)(C) had an active Third Written Coaching in (b) (6), (b) (7)(C) personnel file for attendance violations. [Id.] (b) (6), (b) (7)(C) also had a Second Written Coaching for attendance violations. [Id.] Based on (b) (6), (b) (7)(C) unexcused absences from (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) returned to work, store management issued (b) (6), (b) (7)(C) the next level of coaching, which resulted in (b) (6), (b) (7)(C) discharge. [Id.]

In the past two years, store management has issued 368 coachings and discharged 182 associates for attendance-related violations at that store. [Tabs 41, 42.]

(17) *Laurel, Maryland – Store 1985.*

(b) (6), (b) (7)(C) provided management the generic UFCW-supplied "walk off" letter on (b) (6), (b) (7)(C) [Tab 11.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) did not give a "return to work" notice, but showed up for work on (b) (6), (b) (7)(C) [Id.] At the time that (b) (6), (b) (7)(C) called out, (b) (6), (b) (7)(C) had no active coachings in (b) (6), (b) (7)(C) personnel file. Although (b) (6), (b) (7)(C) unexcused absences warranted the next level of discipline, management determined that it had not consistently applied the attendance policy at the store during the prior few months. Consequently, store management did not discipline (b) (6), (b) (7)(C) at all. Management simply reminded (b) (6), (b) (7)(C) about the attendance policy as part of a personal discussion. [Tab 47.] Store management has issued personal discussions to other similarly-situated associates. [Tab 48.]

In the past two years, store management has issued 653 coachings and discharged 272 associates for attendance-related violations. [Tabs 41, 42.]

(18) *Chelmsford, Massachusetts – Store 2903.*

(b) (6), (b) (7)(C) gave store management the generic UFCW-supplied "walk off" letter dated (b) (6), (b) (7)(C). [Tab 11.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) at which time (b) (6), (b) (7)(C) provided the generic UFCW-supplied "return to work" letter. [Tab 11.] At the time (b) (6), (b) (7)(C) called out, (b) (6), (b) (7)(C) did not have any coaching in (b) (6), (b) (7)(C) personnel file, but had several active unexcused absences. Accordingly, store management issued (b) (6), (b) (7)(C) a First Written Coaching based on (b) (6), (b) (7)(C) unexcused absences from (b) (6), (b) (7)(C) [Tab 44.]

In the past two years, store management has issued 115 coachings and discharged 71 associates for attendance-related violations at that store. [Tabs 41, 42.]

(19) *Chicopee, Massachusetts – Store 5278.*

(b) (6), (b) (7)(C) gave store management the generic UFCW-supplied "walk off" letter dated (b) (6), (b) (7)(C) [Tab 11.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) but did not provide the generic UFCW-

supplied "return to work" letter. Although (b) (6), (b) (7)(C) unexcused absences warranted the next level of discipline, management determined that (b) (6), (b) (7)(C) had no active attendance problems, no active disciplinary record, only a few unexcused absences within a week period, and no personal discussion on file. Consequently, store management did not discipline (b) (6), (b) (7)(C) at all. Management simply reminded (b) (6), (b) (7)(C) about the attendance policy as part of a personal discussion. [Tab 47.] Store management has issued personal discussions to other similarly-situated associates. [Tab 48.]

In the past two years, store management has issued 266 coachings and discharged 117 associates for attendance-related violations at that store. [Tabs 41, 42.]

(20) *Sauk Centre, Minnesota – Store 4253.*

(b) (6), (b) (7)(C) provided store management the generic UFCW-supplied "walk off" letter dated (b) (6), (b) (7)(C) [Tab 11.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] When (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) provided the generic UFCW-supplied "return to work" letter. [Tab 11.] At the time that (b) (6), (b) (7)(C) called out, (b) (6), (b) (7)(C) had no active coachings in (b) (6), (b) (7)(C) personnel file, but (b) (6), (b) (7)(C) management felt like (b) (6), (b) (7)(C) knew what (b) (6), (b) (7)(C) was doing. Accordingly, store management issued (b) (6), (b) (7)(C) a First Written Coaching based on (b) (6), (b) (7)(C) unexcused absences from (b) (6), (b) (7)(C) [Tab 44.]

In the past two years, store management has issued 41 coachings and discharged 24 associates for attendance-related violations at that store. [Tabs 41, 42.]

(21) *Elizabeth City, North Carolina – 1527.*

(b) (6), (b) (7)(C) submitted to management the generic UFCW-supplied "walk off" letter dated (b) (6), (b) (7)(C) [Tab 11.] (b) (6), (b) (7)(C) also called the IVR regarding (b) (6), (b) (7)(C) plan to not work (b) (6), (b) (7)(C) scheduled shift on (b) (6), (b) (7)(C) but (b) (6), (b) (7)(C) did not provide any reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) at which time (b) (6), (b) (7)(C) provided management with the generic UFCW-supplied "return to work" letter. [Tab 11.] Although (b) (6), (b) (7)(C) unexcused absences warranted the next level of discipline, management determined that (b) (6), (b) (7)(C) had no prior attendance problems, no active disciplinary record, only a few unexcused absences within a week period, and no personal discussion on file. Consequently, store management did not discipline (b) (6), (b) (7)(C) at all. Management simply reminded (b) (6), (b) (7)(C) about the attendance policy as part of a personal discussion. [Tab 47.] Store management has issued personal discussions to other similarly-situated associates. [Tab 48.]

In the past two years, store management has issued 161 coachings and discharged 70 associates for attendance-related violations at that store. [Tabs 41, 42.]

(22) *Dallas, Texas – Store 286.*

(b) (6), (b) (7)(C) did not provide management with the generic UFCW-supplied "walk off" letter. (b) (6), (b) (7)(C) did call the IVR to report that (b) (6), (b) (7)(C) would not work (b) (6), (b) (7)(C) scheduled shift on (b) (6), (b) (7)(C) but (b) (6), (b) (7)(C) did not provide a reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) at

which time (b) (6) submitted the generic UFCW-supplied "return to work" letter. [Tab 11.] Notably, (b) (6), (b) (7)(C) has had attendance problems for quite a while. At the time (b) (6) called off (b) (6) had an active Second Written Coaching for excessive unexcused absences. [Tab 44.] Based on (b) (6), (b) (7)(C) unexcused absences from (b) (6), (b) (7)(C), store management issued (b) (6), (b) (7)(C) the next level coaching, a Third Written Coaching. [Id.]

In the past two years, store management has issued 150 coachings and discharged 105 associates for attendance-related violations at that store. [Tabs 41, 42.]

(23) Lancaster, Texas – Store 471

(b) (6), (b) (7)(C) did not give management the generic UFCW-supplied "walk off" letter. (b) (6) did call the IVR to report that (b) (6) would not work (b) (6), (b) (7)(C) scheduled shift on (b) (6), (b) (7)(C) but gave no reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) at which time (b) (6), (b) (7)(C) provided management with the generic UFCW-supplied "return to work" letter. [Tab 11.] As far back as (b) (6), (b) (7)(C) has had attendance problems. At the time (b) (6), (b) (7)(C) called out, (b) (6), (b) (7)(C) already had an active Third Written Coaching for attendance violations. [Tab 44.] (b) (6), (b) (7)(C) also had a Second Written Coaching for attendance violations. [Id.] Thus, based on (b) (6), (b) (7)(C) multiple no call/no shows during the (b) (6), (b) (7)(C) period, management discharged (b) (6), (b) (7)(C) under the no call/no show category "Job Abandonment/3 Days Unreported Absence." [Id.]

(b) (6), (b) (7)(C) did not give management the generic UFCW-supplied "walk off" letter. (b) (6) called the IVR to report that (b) (6) would not work (b) (6), (b) (7)(C) scheduled shift on (b) (6), (b) (7)(C) [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C), at which time (b) (6), (b) (7)(C) provided management with the generic UFCW-supplied "return to work" letter. [Tab 11.] At the time (b) (6), (b) (7)(C) failed to work those shifts, (b) (6), (b) (7)(C) had an active Third Written Coaching in (b) (6), (b) (7)(C) file for attendance violations. [Tab 44.] Based on (b) (6), (b) (7)(C) unexcused absences from (b) (6), (b) (7)(C) management issued (b) (6), (b) (7)(C) the next level of coaching, which resulted in (b) (6), (b) (7)(C) discharge. [Id.]

(b) (6), (b) (7)(C) did not give management the generic UFCW-supplied "walk off" letter. (b) (6) did call the IVR to report that (b) (6) would not work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) but provided no reasons for the unexcused absences. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C), at which time (b) (6), (b) (7)(C) provided management with the generic UFCW-supplied "return to work" letter. [Tab 11.] As far back as (b) (6), (b) (7)(C) has had attendance problems. At the time (b) (6), (b) (7)(C) called out, (b) (6), (b) (7)(C) already had an active Third Written Coaching for attendance violations. [Tab 44.] (b) (6), (b) (7)(C) also had a Second Written Coaching for attendance violations. [Id.] Thus, based on (b) (6), (b) (7)(C) multiple no call/no shows during the (b) (6), (b) (7)(C) period, management discharged (b) (6), (b) (7)(C) under the no call/no show category "Job Abandonment/3 Days Unreported Absence." [Id.]

(b) (6), (b) (7)(C) provided management the generic UFCW-supplied "walk off" letter dated (b) (6), (b) (7)(C) [Tab 5.] (b) (6), (b) (7)(C) also called the IVR to report that (b) (6), (b) (7)(C) would not work (b) (6), (b) (7)(C) shift on (b) (6), (b) (7)(C), but (b) (6), (b) (7)(C) provided no reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned on (b) (6), (b) (7)(C) at which time

(b) (6) provided management with the generic UFCW-supplied “return to work” letter. [Tab 11.] At the time (b) (6) called out, (b) (6), (b) (7)(C) had an active Second Written Coaching in (b) (6), (b) (7)(C) file for attendance violations. [Tab 44.] (b) (6), (b) (7)(C) also had a First Written Coaching for attendance violations. [Id.] Based on (b) (6), (b) (7)(C) unexcused absences from (b) (6), (b) (7)(C) management issued (b) (6), (b) (7)(C) the next level coaching, which resulted in a Third Written Coaching. [Id.]

(b) (6), (b) (7)(C) gave management the generic UFCW-supplied “walk off” letter dated (b) (6), (b) (7)(C) [Tab 11.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C), at which time (b) (6), (b) (7)(C) gave management the generic UFCW-supplied “return to work” letter. [Tab 11.] However, (b) (6), (b) (7)(C) did not warrant the next level of discipline, because (b) (6), (b) (7)(C) only had a few active unexcused absences and had only a few unexcused absences within a week period, and no personal discussion on file. Consequently, store management did not discipline (b) (6), (b) (7)(C) at all. Management simply reminded (b) (6), (b) (7)(C) about the attendance policy as part of a personal discussion. [Tab 47.] Store management has issued personal discussions to other similarly-situated associates. [Tab 48.]

In the past two years, store management has issued 436 coachings and discharged 197 associates for attendance-related violations at that store – 147 under the no call/no show category “Job Abandonment/3 Days Unreported Absences.” [Tabs 41, 42.]

(24) *Quinlan, Texas – Store 4215.*

(b) (6), (b) (7)(C) gave store management the generic UFCW-supplied “walk off” letter dated (b) (6), (b) (7)(C) [Tab 11.] (b) (6), (b) (7)(C) also called the IVR to report that (b) (6), (b) (7)(C) would not work (b) (6), (b) (7)(C) scheduled shift on (b) (6), (b) (7)(C), but provided no reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) and gave management the generic UFCW-supplied “return to work” letter. [Tab 11.] At the time (b) (6), (b) (7)(C) called out, (b) (6), (b) (7)(C) had an active Second Written Coaching in (b) (6), (b) (7)(C) personnel file for poor business judgment. [Tab 44.] Based on (b) (6), (b) (7)(C) unexcused absences from (b) (6), (b) (7)(C), management issued (b) (6), (b) (7)(C) the next level of coaching, a Third Written Coaching. [Id.]

In the past two years, store management has issued 187 coachings and discharged 51 associates for attendance-related violations at that store. [Tabs 41, 42.]

(25) *Bellevue, Washington – Store 3098.*

(b) (6), (b) (7)(C) gave management the generic UFCW-supplied “walk off” letter on (b) (6), (b) (7)(C) [Tab 11.] (b) (6), (b) (7)(C) also called the IVR to report that (b) (6), (b) (7)(C) would not work (b) (6), (b) (7)(C) scheduled shift on (b) (6), (b) (7)(C), but provided no reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) but did not provide the generic UFCW-supplied “return to work” letter. Shortly after returning to work, (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on additional days, independently warranting discipline. [Id.] At the time, (b) (6), (b) (7)(C) had an active Second Written Coaching for attendance violations. [Tab 44.] Notably, (b) (6), (b) (7)(C) First Written Coaching was also for attendance violations. [Id.] Based on all of (b) (6), (b) (7)(C) post-return unexcused absences, management issued (b) (6), (b) (7)(C) the next level coaching, a Third Written Coaching. [Id.]

In the past two years, store management has issued 26 coachings and discharged 52 associates for attendance-related violations. [Tabs 41, 42.]

(26) *Bellingham, Washington – Store 2450.*

(b) (6), (b) (7)(C) gave management the generic UFCW-supplied “walk off” letter on (b) (6), (b) (7)(C) [Tab 11.] (b) (6), (b) (7)(C) also called the IVR to report that (b) (6), (b) (7)(C) would not work (b) (6), (b) (7)(C) scheduled shift on (b) (6), (b) (7)(C) but did not provide a reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) and provided management with the generic UFCW-supplied “return to work” letter. [Tab 11.] Apparently (b) (6), (b) (7)(C) had a death in the family during the above dates and took a few days off for bereavement leave. Accordingly, store management did not discipline (b) (6), (b) (7)(C) and merely reminded (b) (6), (b) (7)(C) about the policy as a personal discussion. [Tab 47.] Store management has issued personal discussions to other similarly-situated associates. [Tab 48.]

(27) *Federal Way, Washington – Store 2571.*

(b) (6), (b) (7)(C) gave store management the generic UFCW-supplied “walk off” letter on (b) (6), (b) (7)(C) [Tab 11.] (b) (6), (b) (7)(C) also called the IVR to report that (b) (6), (b) (7)(C) would not work (b) (6), (b) (7)(C) scheduled shift on (b) (6), (b) (7)(C) but did not provide a reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) and gave the generic UFCW-supplied “return to work” letter to management. [Tab 11.] At the time, (b) (6), (b) (7)(C) called out, (b) (6), (b) (7)(C) had no active coachings in (b) (6), (b) (7)(C) personnel file, but (b) (6), (b) (7)(C) managers had previously given (b) (6), (b) (7)(C) a personal discussion on the attendance issue [Tab 47], so store management issued (b) (6), (b) (7)(C) a First Written Coaching based on (b) (6), (b) (7)(C) unexcused absences. [Tab 44.]

(b) (6), (b) (7)(C) also provided store management the generic UFCW-supplied “walk off” letter on (b) (6), (b) (7)(C) [Tab 11.] (b) (6), (b) (7)(C) also called the IVR to report that (b) (6), (b) (7)(C) would not work (b) (6), (b) (7)(C) scheduled shift on (b) (6), (b) (7)(C) but did not provide a reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) and provided management with the generic UFCW-supplied “return to work” letter. [Tab 11.] Although (b) (6), (b) (7)(C) also previously received a personal discussion on the attendance issue, (b) (6), (b) (7)(C) managers inadvertently overlooked that fact, and based on (b) (6), (b) (7)(C) otherwise good attendance record and lack of any active discipline, just reminded (b) (6), (b) (7)(C) about the policy as a personal discussion.

(b) (6), (b) (7)(C) gave store management the generic UFCW-supplied “walk off” letter on (b) (6), (b) (7)(C) [Tab 11.] (b) (6), (b) (7)(C) also called the IVR to report that (b) (6), (b) (7)(C) would not work (b) (6), (b) (7)(C) scheduled shift on (b) (6), (b) (7)(C) but (b) (6), (b) (7)(C) provided no reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) and provided management with the generic UFCW-supplied “return to work” letter. [Tab 11.] At the time of (b) (6), (b) (7)(C) call out, (b) (6), (b) (7)(C) had no active coachings in (b) (6), (b) (7)(C) personnel file, but (b) (6), (b) (7)(C) had previously received a personal discussion on the attendance issue. Thus, management issued (b) (6), (b) (7)(C) a First Written Coaching based on (b) (6), (b) (7)(C) unexcused absences. [Tab 44.]

(b) (6), (b) (7)(C) gave store management the generic UFCW-supplied "walk off" letter on (b) (6), (b) (7)(C). [Tab 11.] (b) (6), (b) (7)(C) also called the IVR to report that (b) (6), (b) (7)(C) would not work (b) (6), (b) (7)(C) scheduled shift on (b) (6), (b) (7)(C) but (b) (6), (b) (7)(C) provided no reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) and provided management with the generic UFCW-supplied "return to work" letter. [Tab 11.] At the time of (b) (6), (b) (7)(C) call out, (b) (6), (b) (7)(C) had no active coachings in (b) (6), (b) (7)(C) personnel file, but (b) (6), (b) (7)(C) had previously received a personal discussion on the attendance issue. Thus, management issued (b) (6), (b) (7)(C) a First Written Coaching based on (b) (6), (b) (7)(C) unexcused absences. [Tab 44.]

(b) (6), (b) (7)(C) gave store management the generic UFCW-supplied "walk off" letter on (b) (6), (b) (7)(C). [Tab 11.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) and provided management with the generic UFCW-supplied "return to work" letter. [Tab 11.] At the time of (b) (6), (b) (7)(C) call out, (b) (6), (b) (7)(C) had no active coachings in (b) (6), (b) (7)(C) personnel file, but (b) (6), (b) (7)(C) had previously received a personal discussion on the attendance issue. Thus, management issued (b) (6), (b) (7)(C) a First Written Coaching based on (b) (6), (b) (7)(C) unexcused absences. [Tab 44.]

(b) (6), (b) (7)(C) gave store management the generic UFCW-supplied "walk off" letter on (b) (6), (b) (7)(C). [Tab 11.] (b) (6), (b) (7)(C) also called the IVR to report that (b) (6), (b) (7)(C) would not work (b) (6), (b) (7)(C) scheduled shift on (b) (6), (b) (7)(C) but (b) (6), (b) (7)(C) provided no reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) and provided management with the generic UFCW-supplied "return to work" letter. [Tab 11.] At the time of (b) (6), (b) (7)(C) call out, (b) (6), (b) (7)(C) had an active First Written Coaching for attendance violations. [Tab 44.] Notably, (b) (6), (b) (7)(C) also had a previous First Written Coaching for attendance violations. [Id.] Thus, based on (b) (6), (b) (7)(C) recent unexcused absences, management issued (b) (6), (b) (7)(C) the next level coaching, a Second Written. [Id.]

In the past two years, store management has issued 94 coachings and discharged 36 associates for attendance-related violations at that store. [Tabs 41, 42.]

(28) *Mt. Vernon, Washington – Store 2596.*

(b) (6), (b) (7)(C) gave store management the generic UFCW-supplied "walk off" letter dated (b) (6), (b) (7)(C). [Tab 11.] (b) (6), (b) (7)(C) also called the IVR to report that (b) (6), (b) (7)(C) would not work (b) (6), (b) (7)(C) scheduled shift on (b) (6), (b) (7)(C), but (b) (6), (b) (7)(C) provided no reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) at which time (b) (6), (b) (7)(C) provided management with the generic UFCW-supplied "return to work" letter. [Tab 11.] Although (b) (6), (b) (7)(C) unexcused absences warranted the next level of discipline, management determined that (b) (6), (b) (7)(C) had no prior attendance problems, no disciplinary record, only a few unexcused absences within a week period, and no personal discussion on file. Consequently, store management did not discipline (b) (6), (b) (7)(C) at all. Management simply reminded (b) (6), (b) (7)(C) about the attendance policy as part of a personal discussion. [Tab 47.] Store management has issued personal discussions to other similarly-situated associates. [Tab 48.]

(b) (6), (b) (7)(C) gave store management the generic UFCW-supplied “walk off” letter dated (b) (6), (b) (7)(C). [Tab 11.] (b) (6), (b) (7)(C) also called the IVR to report that (b) (6), (b) (7)(C) would not work (b) (6), (b) (7)(C) scheduled shift on (b) (6), (b) (7)(C), but (b) (6), (b) (7)(C) provided no reason for the unexcused absence. [Tab 26.] (b) (6), (b) (7)(C) failed to work (b) (6), (b) (7)(C) scheduled shifts on (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) [Tab 16.] (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) at which time (b) (6), (b) (7)(C) provided management with the generic UFCW-supplied “return to work” letter. [Tab 11.] Although (b) (6), (b) (7)(C) unexcused absences warranted the next level of discipline, management determined that (b) (6), (b) (7)(C) had no prior attendance problems, no disciplinary record, only a few unexcused absences within a week period, and no personal discussion on file. Consequently, store management did not discipline (b) (6), (b) (7)(C) at all. Management simply reminded (b) (6), (b) (7)(C) about the attendance policy as part of a personal discussion. [Tab 47.] Store management has issued personal discussions to other similarly-situated associates. [Tab 48.]

In the past two years, store management has issued 183 coachings and discharged 64 associates for attendance-related violations. [Tabs 41, 42.]

C. The UFCW Threatens More IWS In The Future.

The UFCW promises to continue its IWS campaign in the future. See <http://www.jwj.org/blog/apply-join-2013-change-walmart-summer> (calling for 2000 actions at Walmart stores on Labor Day alone by “Walmart strikers, fired worker leaders, union members and retirees, students, community activists and others [who] will join together for this historic summer”) (emphasis added). In fact, (b) (6), (b) (7)(C) testified quite definitively that the UFCW plans to just keep doing what it has been doing. [Tab 2 (180:1-3; “We’ll continue to do that in the ways we have been.”).]

II. LEGAL ANALYSIS.

A. Store Management Did Not Violate The Act By Reminding Associates About The Attendance Policy Requirements In February 2013.

The UFCW alleges that in February 2013, Walmart “threatened Associates who had struck [at ten listed stores] with discipline if they engaged in further protected activity.” But that allegation fails because it contains an embedded false premise (IWS associates engaged in prior protected strike activity) and assumes facts not in evidence (Walmart threatened discipline for protected activity).

As to the embedded false premise, the Act does not protect intermittent work stoppages. Walmart sets forth the IWS analysis in detail below.

And as to the facts not in evidence, the allegation fails because Walmart did not make any threat of discipline related to protected activity. To the contrary, Walmart specifically told associates who previously engaged in one or more UFCW-orchestrated walk-offs, that Walmart would apply its attendance policy to “unprotected” activity.

Walmart managers at nine of the ten listed stores read pre-prepared talking points to certain associates who previously engaged in IWS activity (no one read the talking points or gave any similar message to anyone at the Baker, Louisiana store). To Walmart’s knowledge,

the UFCW does not allege that any of the managers went “off script.” Accordingly, the allegation turns on the contents of the pre-prepared talking points. [Tab 27.] In pertinent part, those talking points said, “the Company does not believe that the Act protects the UFCW’s hit-and-run work stoppages, and if you engage in union-orchestrated intermittent work stoppages that are part of a common plan or design to disrupt and confuse the Company’s business operations, the Company will apply its attendance policy to such absences.” [*Id.*] That’s it. There is nothing unlawful about that statement as it accurately reflects Board law.

The Board dealt with an identical situation in *National Steel and Shipbuilding Co.*, 324 NLRB 499, 499, 505 nn. 13, 15, 526-27 (1997). In that case, the ALJ first found – and the Board affirmed – that the Act did not protect the union’s intermittent work stoppages (discussed below). The ALJ then found – and the Board affirmed – that: “when NASSCO, consistent with its established programs, assessed attendance points against or otherwise disciplined participants in those March stoppages, and when it *admittedly threatened to discipline others who engaged in similarly unprotected activities*, its actions did not implicate Section 7 rights and thus did not violate Section 8(a)(1) or (3).” *Id.* (emphasis added).

The Board recently adopted the ALJ’s reasoning on similar facts with an identical result in *Pennsylvania American Water Co.*, 359 NLRB No. 142 (June 28, 2013). There, the core of the case involved a dispute over the scope of the union’s no strike language, in particular whether it covered sympathy strikes for different units represented by the same union. The employer lost its argument that the contract’s sympathy strike rights only applied to strikes by stranger unions and, as such, the Board held that the employer’s threats to discipline sympathy strikers violated the Act. However, in the same letter to employees where the employer told employees they could not engage in sympathy strikes, the employer also notified employees that they could be disciplined for engaging in unlawful intermittent strikes. The employer’s letter stated, in part: “In addition, if Local 537 employees repeatedly refuse to cross picket lines manned by Local 537 members, such refusal may constitute an intermittent work stoppage.” *Id.* at *22. The ALJ, in a decision adopted by the Board, rejected the GC’s argument that the IWS “threat” violated the Act, holding “That is an accurate statement, one the union might consider. I do not accept the GC’s contention that sympathy strikers are immune from losing the protections of the Act for engaging in ‘hit and run’ work stoppages.” *Id.* (citing to *Pacific Telephone*, 107 NLRB 1547 (1954) (discussed below)).

The same rule applies here. Walmart did no more than lawfully remind certain associates that the Company would apply its attendance policy to any absences associated with an *unprotected* hit-and-run, intermittent work stoppage after giving a legally correct definition of what that term means. Store management made no generic prohibition on participating in “protected activity.” Indeed, numerous Walmart associates routinely engage in UFCW-related protected activity (including participating in non-disruptive protests on non-working time) at many locations around the country without any disciplinary action.

B. The JWO Associates Did Not Engage in Protected Activity When They Skipped Work To Participate In The UFCW's Education/Media Events.

Employees may not skip out on assigned shifts merely to attend union-sponsored events. As the Board holds, “[l]eaving work early is not [automatically] protected activity even when the object of leaving is to engage in protected activity.” *Quantum Electric, Inc.*, 341 NLRB 1270, 1279 (2004); *Merillat Industries, Inc.*, 307 NLRB 1301, 1305 (1992); *GK Trucking Corp.*, 262 NLRB 570 (1982); *see also Gulf Coast Oil Co.*, 97 NLRB 1513 (1952) (employer lawfully discharged 11 employees who violated employer’s reporting time rule when they went to the union hall to discuss membership instead of starting work); *Terri Lee, Inc.*, 107 NLRB 560 (1953) (upholding employer’s discharge of four employees who missed work to consult with a union about a cut in their pay rates); *see also Crown Coach Corp.*, 155 NLRB 625, 636 (1965) (upholding employer’s discharge of 14 employees who missed scheduled work to attend a union “demonstration meeting”); *Northeast Beverage Corp. v. NLRB*, 554 F. 3d 133,140 (D.C. Cir. 2009) (employees who left work early to meet with union representatives to discuss employment terms not protected by the Act); *cf. Calmex, Inc.*, Advice Memorandum, Case No. 32-CA-22651 (Kearney, November 30, 2006) (employer may discipline employees who miss scheduled work to attend an immigration rally).

On strikingly similar facts, in *Merillat*, the Board concluded that a union’s staging of a demonstration at an employer’s annual shareholder meeting qualified as “union business” or a “union meeting,” and not a protected “strike.” 307 NLRB at 1305. In *Merillat*, a union planned a protest at the employer’s annual shareholder’s meeting to “attract attention to the plight” of respondent’s employees. *Id.* at 1305. The union planned the protest to occur during the parties’ negotiations for a successor agreement, after contract expiration. *Id.* After unsuccessfully asking the employer to grant the employees time off for “union business,” the union threatened to stage a “sick out,” where employees would feign the need for sick leave and then attend the union’s rally. *Id.* The employer threatened to meet any sick-out with disciplinary action. *Id.* Notably, the ALJ squarely rejected the General Counsel’s claim that the employer’s threat violated the Act. *Id.* The ALJ concluded the Act did not protect the union’s planned “sick out” because the union’s planned demonstration at the shareholder meeting constituted “union business,” not a protected walkout to protest pending grievances. *Id.* The ALJ reasoned that the union demonstration was a “transitory usurpation of working time, rather than a strike designed to obtain concessions from the employer.” *Id.* (citing to *GK Trucking Corp.*, 262 NLRB 570 at 572). The ALJ concluded, “the law protects a walkout, which is nontransitory and in quest of improved conditions of work, but does not embrace insubordination, even where manifested on a group basis, and in conjunction with union or concerted activity.” *Id.*

As in *Merillat*, OURWalmart’s “Ride for Respect” and the “National Week of Action” events leading up to and at Walmart’s Shareholder’s Meeting were a “transitory usurpation of working time, rather than a strike designed to obtain concessions” 307 NLRB at 1305. OURWalmart patterned the event after the Civil Rights “Freedom Rides” of the 1960s, which, while socially laudable, were not strikes or labor-actions. The UFCW’s (b) (6), (b) (7)(C) correctly described the “Ride for Respect” as “a massive education program meant to educate” employees and others about Walmart. OURWalmart’s action started with a series of

“pep rallies” with clear social and organizational undertones. Then many participants – including the JWO Associates – engaged in community and union education meetings and photo-ops enroute to Bentonville. So rather than hitting an indefinite-duration picket line to protest some discrete work-related complaint, OURWalmart members spent the first three days of the “Ride for Respect” on an extended bus ride, enjoying stops for community meetings, publicity events, and panel discussions. Once in Bentonville, OURWalmart’s *organizational and media* (not *striking*) activities continued: museum visits, marches through downtown Bentonville, “inspirational” meetings with labor leaders, team-building discussions, a photo-op with an oversize check in front of Mr. Walton’s house and business, and a protest regarding an international fire safety accord (having nothing to do with Walmart associates’ working conditions). OURWalmart also orchestrated a street-theater event where members taped over their mouths and posed for pictures in front of the Home Office. Those media events constituted union-orchestrated organizational and PR meetings; not a “strike,” as defined by Board law.

Indeed, OURWalmart’s climactic event – its participation in the Annual Shareholder Meeting – bore absolutely no relation to a labor strike. Instead, OURWalmart participants attended the meeting just like any other shareholders. And OURWalmart representatives made a shareholder proposal on an item having nothing to do with any workplace concession demand or even associate working conditions. Rather, the penultimate event of the UFCW’s entire “Ride for Respect” educational and media event consisted of offering a shareholder proposal to limit executive compensation. Attending and participating in a shareholder meeting simply does not qualify as a “strike” – excusing a work stoppage – under Board law. *See, e.g., Calmex, Inc.*, Advice Memorandum, Case No. 32-CA-22651 (Kearney, November 30, 2006) (employer may discipline employees who miss scheduled work to attend a pro-immigration rally).

C. Walmart Lawfully Disciplined JWO Associates Who Failed To Properly Notify Management About Their Unexcused Absences.

With one exception ((b) (6), (b) (7)(C)), who called the IVR line each day of (b) (6), (b) (7)(C) JWO absence), the JWO Associates also engaged in unprotected activity when they failed to notify their store management that they would not show up for work beyond the one-day generic “strike” notice they provided to store management. All of the JWO Associates failed to work their scheduled shifts between approximately (b) (6), (b) (7)(C) through (b) (6), (b) (7)(C). Walmart requires its Associates to report absences before each scheduled shift. [Tab 24.] Failure to do so constitutes a no-call/no-show, which results in serious disciplinary action. [*Id.*] Even if the JWO Associates engaged in protected activity by participating in the UFCW’s “Ride for Respect” education and media event (they did not), they cannot simply disappear from work without notifying management of their absence and then reappear when it suits them. *Compare, Bird Engineering*, 270 NLRB 1415, 1415 (1984) (upholding discharge of employees who collectively left work during lunch to protest the employer’s stay-on-site lunch break rule because they “were attempting to remain on the job and to determine for themselves which terms and conditions of employment they would observe.”).

Even if the Region considered an express, one-day (“Today”) strike notice to constitute notice of multiple day absences (an unsupported conclusion), several associates gave no notice of

any “strike” or “work stoppage” at all. (b) (6), (b) (7)(C)

, and (b) (6), (b) (7)(C) gave the Company absolutely no prior notice that they were engaging in any kind of labor-related work stoppage or strike. As such, they were “attempting to . . . determine for themselves which terms and conditions of employment they would observe,” *id.*, and the Act does not protect such conduct. Consequently, Walmart could lawfully discipline them under its “no-call/no-show” attendance policy requirements.

D. The JWO Associates Did Not Engage In Protected Activity When They Participated In The UFCW’s IWS Campaign.

The JWO Associates did not engage in a work stoppage to protest working conditions. Instead, the UFCW gave them an expense-paid bus tour complete with working groups, panel discussions, parties, photo ops, parades, and a shareholder’s proposal. None of that says “protected strike.” But if the Region believes that bus tours and panel discussions constitute a “labor” work stoppage, the Act still does not protect the June walk-offs – even if any individual associate walked-off for the first time – because the UFCW orchestrated those walk-offs as part of carefully choreographed series of hit-and-run, intermittent work stoppages designed to disrupt Walmart’s store operations with the accompanying “walk-off” demonstrations. [See demonstration video clips at Tab 8.] As described below, the Act does not protect intermittent work stoppages.

1. The United States Supreme Court Found No Protection For IWS.

The United States Supreme Court does not often address the issue of intermittent work stoppages. But when last it did, it found them unprotected under federal labor law. *International Union v. Wisconsin Employment Relations Board*, 336 U.S. 245, 254 (1949) (*Briggs-Stratton*) (twenty six surprise work stoppages over five months not protected by federal labor law and subject to state regulation); *National Labor Relations Board v. Insurance Agents*, 361 U.S. 477, 493-494 (1960) (noting that the Act does not protect deliberate “slowdowns” or “sit-ins” in the same way that it did not protect intermittent work stoppages in *Briggs-Stratton*). To be sure, subsequent Supreme Court cases determined that the Act preempts state regulation of labor-related work stoppages, but the Court’s core finding that the NLRA does not protect intermittent work stoppages remains intact.

Not surprisingly, the federal courts of appeal adopt the same view. *See, e.g., NLRB v. Robertson Industries*, 560 F.2d 396, 398 (9th Cir.1976) (Act does not protect harassing techniques, such as intermittent or recurrent strikes, because they produce a situation that is “neither strike nor work”); *NLRB v. Blades Mfg. Co.*, 344 F.2d 998, 1005 (8th Cir.1965) (three one-day work stoppages in less than two weeks, undertaken pursuant to a preconceived and continuing plan to stop work each time the company refused to adjust grievances, were unprotected intermittent work stoppages; rejecting Board view that alleged ULPs by Company precipitated work stoppages based on overarching union plan).

And, of course, the Board has also long held that the Act does not protect intermittent work stoppages.